

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 265.

HARTFORD LIFE INSURANCE COMPANY, PETITIONER,

vs.

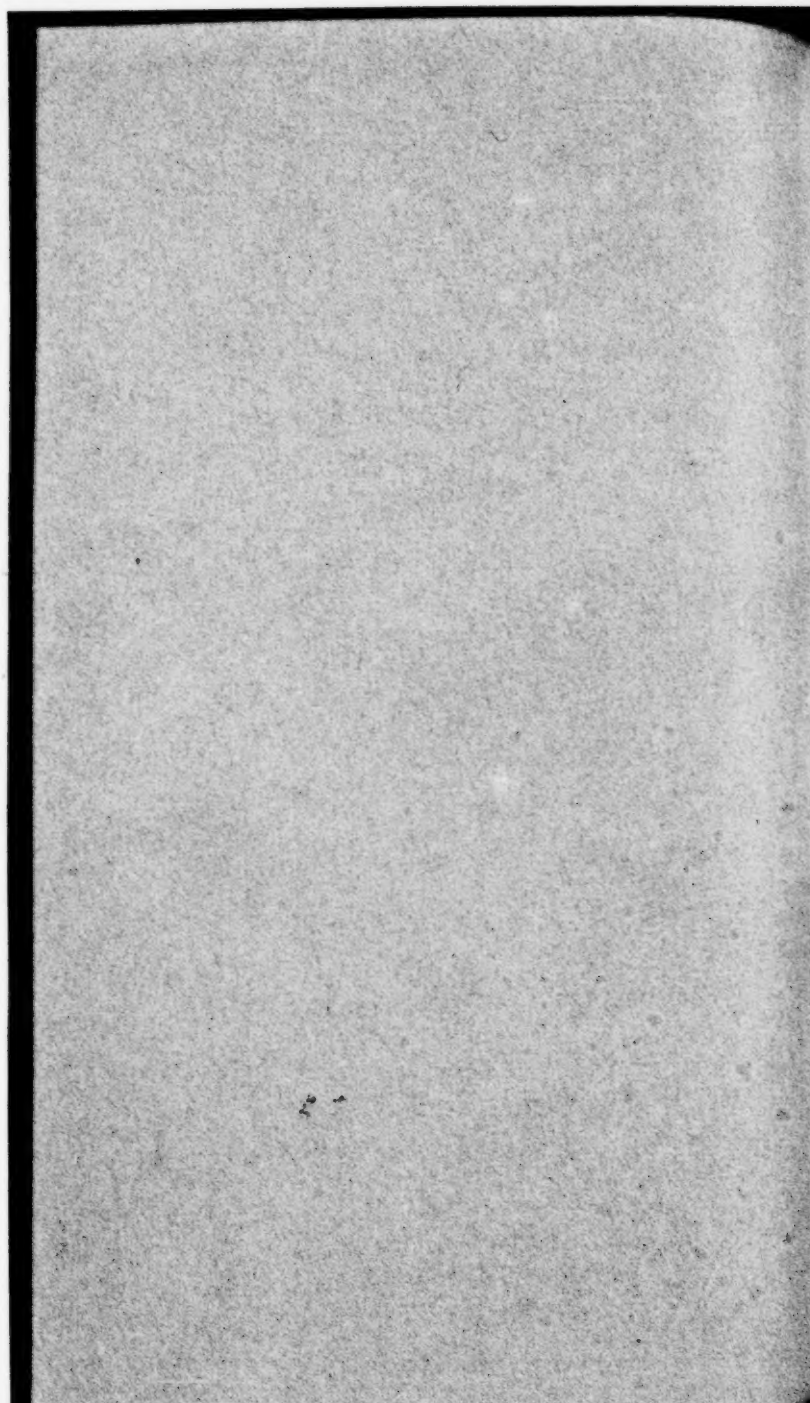
**FRANK F. DOUDS, HERMAN J. DOUDS, AND REBECCA E.
McCONKEY, EXECUTORS, &c.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OHIO.**

PETITION FOR CERTIORARI FILED FEBRUARY 3, 1922.

CERTIORARI AND RETURN FILED APRIL 29, 1922.

(28,690)



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OF OHIO.

INDEX.

| | Original. | Print. |
|--|-----------|--------|
| Proceedings in supreme court of Ohio..... | 3 | 1 |
| Motion to certify record..... | 3 | 1 |
| Petition in error..... | 5 | 2 |
| Waiver of summons..... | 6 | 3 |
| Record from common pleas court of Franklin County..... | 7 | 3 |
| Transcript of docket and journal entries..... | 7 | 3 |
| Petition for restraining order..... | 11 | 6 |
| Exhibit A—Sample policy of Hartford Life Ins. Co.... | 17 | 9 |
| Answer | 35 | 19 |
| Reply | 48 | 25 |
| Report of referee..... | 50 | 27 |
| Motion to vacate report of referee..... | 92 | 54 |
| Motion to confirm report of referee..... | 94 | 55 |
| Record from court of appeals of Franklin County..... | 95 | 55 |
| Transcript of docket and journal entries..... | 95 | 55 |
| Motion for new trial..... | 97 | 56 |
| Bill of exceptions..... | 99 | 57 |

| | Original. | Print. |
|---|-----------|--------|
| Stipulation as to submission..... | 99 | 57 |
| Motion for new trial..... | 101 | 58 |
| Order settling bill of exceptions..... | 103 | 60 |
| Testimony of George D. Frey..... | 111 | 64 |
| Report on examination of safety fund department. | 125 | 74 |
| Exhibit A—Insurance policy of Alonzo J. Donds..... | 155 | 90 |
| Exhibit BB—Call issued November 1, 1918..... | 173 | 101 |
| D—Report of C. C. Hall..... | 174 | 102 |
| E—Safety-fund statistics..... | 197 | 115 |
| F—Notice to policy holders..... | 199 | 116 |
| B—Testimony of George D. Fry..... | 199 | 117 |
| A—Blank form of Hartford Life Ins. Co..... | 212 | 125 |
| B—Table of insurance statistics of Alonzo J. Donds | 213 | 126 |
| C—Safety-fund statistics..... | 216 | 131 |
| Minute entry..... | 218 | 132 |
| Journal entry of judgment..... | 219 | 133 |
| Clerk's certificate..... | 220 | 134 |
| Opinion, Robinson, J..... | 221 | 134 |
| Reporter's certificate..... | 219 | 133 |

1-3 Supreme Court of Ohio.

No. 16833.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

ALONZO J. DOUDS, Defendant in Error.

Motion for Order to Certify.

[Filed November 16, 1920.]

Now comes the plaintiff in error, The Hartford Life Insurance Company, and moves this honorable court for an order directing the Court of Appeals of Franklin county, Ohio, to certify to this court its record in the above entitled cause, being Cause No. 778 upon the docket of the said Court of Appeals, wherein the said Alonzo J. Douds was plaintiff and the said The Hartford Life Insurance Company was defendant, on the following grounds, viz.:

- (1) The case is of public and great general interest.
- (2) Error has probably intervened.

Alonzo J. Douds was a member of the Safety Fund Department of plaintiff in error, which does a life insurance business on the assessment plan, and brought this action in equity for an accounting of alleged excessive assessments paid by him to plaintiff in error between the years 1899 and 1919.

The referee appointed by the Common Pleas Court found for defendant in error in the sum of \$1,857.15, for which amount judgment was entered in that court.

An appeal was taken to the Court of Appeals and the case being there submitted upon evidence, that court on the eighth day of November, 1920, rendered judgment for defendant in error in the sum of \$1,857.15 and interest, after overruling plaintiff in error's motion for a new trial. The motion to certify is filed in this court within seventy days of the entering of said judgment by the Court of Appeals.

The jurisdictional question herein presented involves the rights of several hundred residents of Ohio, and several thousand residents of other states, members of the Safety Fund Department, and hundreds of thousands of members of other assessment associations in this and other states. This jurisdictional question has never been determined by this court, and the decision of the Court of Appeals establishes the first precedent in Ohio, which is contrary to decisions of the Supreme Courts of the States and of Missouri and the Court of Appeals of New York in actions brought by members of the Safety Fund Department. In view of the conflict between the de-

cision of the Ohio Nisi Prius Court with the decisions of the courts
above mentioned, and of the importance of the question to
5 the hundreds of thousands of members of similar associa-
tions, this court should review the case and establish the rule
of law in Ohio applicable to this situation.

JONES, HOCKER, SULLIVAN &
ANGERT AND ARNOLD & GAME,
Attorneys for Plaintiff in Error.

STATE OF OHIO,
Franklin County, ss:

H. B. Arnold, being duly sworn, says he is one of the attorneys
for plaintiff in error, and that the facts stated in the foregoing mo-
tion are true, as he believes.

H. B. ARNOLD.

Sworn to before me and subscribed in my presence this thirteenth
day of November, 1920.

[SEAL.]

F. J. WRIGHT,
Notary Public, Franklin County, Ohio.

Columbus, Ohio, November 13, 1920.

Service of the foregoing motion and its filing is hereby acknow-
edged.

SMITH W. BENNETT,
Attorneys for Defendant in Error.

Petition in Error.

[Filed November 30, 1920.]

Plaintiff in error says that at the September Term, 1920, of the
Court of Appeals of Franklin county, defendant in error recovered
a judgment against plaintiff in error by the consideration of said
court, in an action then pending therein, wherein plaintiff in error
was defendant, and defendant in error was plaintiff, a transcript of
the docket and journal entries whereof is filed herewith.

6 There is error in said record and proceedings in this
to wit:

1. Said court erred in overruling the motion of plaintiff in error
for a new trial.

2. Said court erred in deciding and adjudging that it had juris-
diction of the subject matter of this action, and in deciding and ad-
judging that the assumption and exercise by it of jurisdiction over
the subject matter of this action was not and is not a violation of
the constitutional rights of the plaintiff in error, and was not and
is not a taking of its property and a denial to it of due process of
law, under and against the provisions of the Fourteenth Amend-
ment to the Constitution of the United States.

3. Said court erred in deciding and adjudging that the payments by defendant in error sought to be recovered herein were not voluntarily made, so as to preclude recovery by him.

4. Said court erred in deciding and adjudging that plaintiff in error was barred from recovery herein by reason of the provisions of the statute of limitations.

5. Said court erred in rendering judgment for defendant in error.

JONES, HOCKER, SULLIVAN &
ANGERT AND ARNOLD & GAME,
Attorneys for Plaintiff in Error.

Waiver.

Columbus, Ohio, November 13, 1920.

The issuance of summons in error in the above case is waived, and the appearance of defendant in error is hereby entered.

SMITH W. BENNETT,
Attorney for Defendant in Error.

In the Common Pleas Court, Franklin County, Ohio.

[No. 73462.]

ALONZO J. DOUDS, Plaintiff,

vs.

THE HARTFORD LIFE INSURANCE COMPANY, Defendant.

Transcript of Docket and Journal Entries.

1916, November 1.—Petition and affidavit filed.

1916, November 1.—Precipe filed; summons issued sheriff Franklin county, Ohio, returnable November 13; answer December 2, 1916.

1916, November 1.—Summons issued sheriff Franklin county, Ohio, returnable November 13; answer December 2, 1916.

1916, December 2.—Demurrer of defendants filed.

1916, December 5.—Memorandum on demurrer filed.

1917, January 15.—Memorandum of plaintiff filed.

1917, January 24.—Reply filed to supplementary memorandum of plaintiff.

1917, April 19.—Amended demurrer filed.

1917, April 14.—Demurrer of defendant and amended demurrer both overruled; exception.

1917, April 24.—Depositions on behalf of plaintiff filed.

1918, December 5.—Motion and memorandum of plaintiff filed.

8 1918, December 13.—Answer of defendant filed.
 1918, December 13.—Ordered that defendant file answer
 instanter as entry.

 1919, January 4.—Ordered that cause be referred to George B.
 Okey, referee, as entry; exception.

 1919, January 10.—Reply of plaintiff filed.

 1919, November 28.—Bill of exceptions filed. (Okey, referee.)

 1919, November 28.—Report of referee filed.

 1919, November 28.—Objections to exceptions filed and motion
 of defendant to vacate filed.

 1920, January 9.—Motion filed.

 1920, January 15.—Brief of plaintiff filed.

 1920, January 19.—Motion suggesting death of plaintiff filed.

 1920, January 21.—Ordered that said cause stand revived; ex-
 ception.

 1920, March 4.—Judgment for plaintiff for \$1,857.15 and interest
 from September 1, 1919, and costs and referee fee of \$250; excep-
 tion; notice of appeal, appeal bond fixed at \$500 as entry.

 1920, March 26.—Appeal bond filed. 7-165.

 April 14, 1917.—This day this cause came on to be heard upon
 the demurrer and amended demurrer of the defendant, The Hart-
 ford Life Insurance Company, to the petition of the plaintiff. The
 same was argued by counsel. The court upon consideration thereof,
 being duly advised in the premises, doth find that said demurrer
 and amended demurrer are not well taken, and the same are ac-
 cordingly overruled, to which order and judgment of the court the
 defendant, by its counsel, excepted.

9 Said defendant has leave to plead herein by May 26, 1917.
 December 13, 1918.—It is hereby ordered that defendant file
 its answer instanter, which is forthwith done.

 January 4, 1919.—This cause came on to be heard upon the mo-
 tion of the plaintiff for a reference of this cause to a referee to take
 the evidence of the parties and witnesses; to determine the questions
 of law and fact involved herein and to state thereon his conclusions
 separately; and the court doth find that said cause is one in which the
 parties are not entitled by the constitution to a trial by jury.

 It is therefore by the court ordered that said cause be referred to
 Honorable George B. Okey, who as such referee is directed to reduce
 the testimony of the parties and witnesses to writing and to have the
 testimony thereof subscribed by each witness, unless the signature
 thereto is waived by the parties hereto.

 Said referee further has authority to settle all questions of plead-
 ings in said cause and to permit parties hereto to amend or supple-
 ment the pleadings herein if necessary, and that such referee make
 report to this court under this order without delay.

 To all of which foregoing orders of said court the defendant, The
 Hartford Life Insurance Company, by its counsel, protests, objects
 and excepts.

 January 21, 1920.—This day this cause came on to be heard on the
 motion of plaintiff's counsel for a revivor of this action, and the death

10 of the plaintiff having been suggested, and it appearing that Rebecca E. McConkey, Frank E. Douds and Herman J. Douds are the duly appointed, qualified and acting executors under the last will and testament of Alonzo J. Douds, deceased, and that they should be as such executors substituted as plaintiffs instead of Alonzo J. Douds, it is by the court so ordered and said cause stands revived. To all of which the defendant excepts.

March 4, 1920.—This day this cause coming on to be heard upon the report of Hon. George B. Okey, referee herein, and of his findings of facts and conclusions of law, and the objections and exceptions to said report filed by the defendant, The Hartford Life Insurance Company, and upon the motion of the plaintiff, Alonzo J. Douds, to confirm the report of the referee and for a decree thereon in conformity to said report.

Said cause being first heard upon the said objections and exceptions of the said defendant to said report, the same was argued by counsel, and the court being fully advised in the premises, and upon consideration of the same, doth overrule said objections and exceptions and each of the grounds thereof, to which order and judgment of the court the defendant, by its counsel, excepts.

Said cause was then heard upon the motion of the plaintiff to confirm the report of said referee herein and for a decree thereon in conformity therewith, and the same having been argued by counsel, and the court being fully advised in the premises, finds said report of said referee, in all respects, regular, and the conclusions of law of said referee, in all respects, correct, and said report is approved and confirmed.

11 And said referee having found and reported on taking an account between said plaintiff and defendant, that there is a balance due said plaintiff from said defendant, for assessments paid by the plaintiff in excess of the contract rate in the sum of \$1,857.15, with interest thereon from the first day of September, 1919.

It is, therefore, considered and decreed by the court that the plaintiff, Alonzo J. Douds, recover of the defendant, The Hartford Life Insurance Company, the sum of \$1,857.15, together with interest thereon at the rate of six per cent from the first day of September, 1919, and his costs herein expended, including a fee of \$250 hereby allowed to the said referee, and in all taxed at \$—, to which order and decree the said defendant, The Hartford Life Insurance Company, by its counsel, excepts.

The said defendant having given notice of its intention to appeal said cause to the Court of Appeals, Franklin county, Ohio, it is by the court ordered that the amount of such appeal bond be \$500 with surety to the approval of the court of this county.

[Duly certified.]

Petition.

[Filed November 1, 1916.]

The plaintiff, Alonzo J. Douds, says:

That on the first day of May, 1886, The Hartford Accident Insurance Company was duly created a corporation under the act of the General Assembly of the State of Connecticut, and accepted and adopted the terms, powers and limitations of a charter as defined in said act of the General Assembly of the State of Connecticut,
 12 and duly organized thereunder as such corporation with the powers and limitations therein enumerated and contained.

That thereafter by amendment to its charter, said Hartford Accident Insurance Company, being authorized so to do by act of the General Assembly of the State of Connecticut, dated May 22, 1867, duly changed its name to The Hartford Life & Accident Insurance Company, and subject to the powers and limitations as contained in said act amended its said charter.

That thereafter, by amendment to its said charter, said The Hartford Life & Accident Insurance Company, being authorized so to do by the act of the General Assembly of the State of Connecticut, dated June 17, 1868, duly changed its name to The Hartford Life & Annuity Insurance Company, and subject to the powers and limitations as contained in said act amended its said charter.

That thereafter, by amendment to its said charter, said The Hartford Life & Annuity Insurance Company, being authorized so to do by act of the General Assembly of the State of Connecticut, dated the third day of March, 1897, duly changed its name to The Hartford Life Insurance Company, and subject to the powers and limitations contained in said act it amended its said charter, and which said last described act of the General Assembly of the State of Connecticut, duly provided as follows:

"Section I. That the corporate name of The Hartford Life and Annuity Insurance Company, a corporation located and doing a life insurance business in Hartford, in the State of Connecticut, be and the same is hereby changed to The Hartford Life Insurance Com-

pany, by which name it shall be hereafter known and called.
 13 "Section II. All contracts, rights, obligations, property, privileges and franchises of the said The Hartford Life & Annuity Insurance Company shall be and remain unimpaired and vested in the corporation under its new name."

That the said defendant, The Hartford Life Insurance Company, is engaged in carrying on its said business within the State of Ohio, and collecting from those insured therein, residents of said State of Ohio, the amounts of the assessments and dues as hereinafter set forth, and was so engaged at the several times herein contained.

For its cause of action against the said defendant, the plaintiff Alonzo J. Douds, says:

That on or about the second day of May, 1883, in consideration of the representations, agreements and warranties contained in the certificate of insurance hereto attached he purchased from said defendant the insurance hereinafter described, and in consideration of an admission fee paid, and of the sum of ten dollars to be paid the said defendant, The Hartford Life Insurance Company, and by The Hartford Life Insurance Company to be deposited with a certain trustee to create a safety fund to secure the payment of said policies, and of three dollars per annum for expense, and the further payment in accordance with the conditions of three certain certificates of insurance, then issued and delivered to the said plaintiff, Alonzo J. Douds, insured the life of the said Alonzo J. Douds in the sum of three thousand dollars. That said certificates of insurance, all of which were of the same tenor and effect, provided that said amount of three thousand dollars upon the death of said Alonzo J. Douds, the plaintiff herein, should be paid to his estate within ninety days after the receipt of proof of death of the said Alonzo J. Douds.

A copy of one of said certificates of insurance, the others being of the same tenor and effect, is attached hereto and marked "Exhibit A."

Plaintiff further says that he duly kept and performed all the terms and conditions of said contract of insurance as represented in said certificates of insurance, but that the said defendant, The Hartford Life Insurance Company, violated the terms of said contract as set forth therein in this, to wit, that according to said contract the said plaintiff was to pay to the said defendant the amounts as fixed by the table of graduated assessment rates printed upon the back of said certificate, hereto attached, marked "Exhibit A," up to sixty years of age, at which age of sixty years and thereafter, the rate of two dollars and sixty-eight cents is fixed. That said plaintiff reached the age of sixty years on the — day of —, 1898, and thereafter, by reason of the orders and directions of said defendant, The Hartford Life Insurance Company, he was compelled to pay assessments to the said defendant in excess of the rate of two dollars and sixty-eight cents, in violation of said contract of insurance, to wit: At age sixty-one, \$2.86 per assessment per thousand of insurance; at age sixty-two, \$3.08 per assessment per thousand of insurance; at age sixty-three, \$3.30 per assessment per thousand of insurance; at age sixty-four, \$3.65 per assessment per thousand of insurance, and at age sixty-five, and thereafter, at the rate of four dollars (\$4.00) per assessment per thousand of insurance.

That each and all of said payments so made by him in advance of two dollars and sixty-eight cents per assessment on each thousand dollars of said insurance, so issued by the said defendant Company, is held by the said defendant company in trust for this said plaintiff pursuant to the terms of said certificate and each and every part thereof. Plaintiff says that each and all of said payments made by him after he arrived at the age of sixty years were made and paid in ignorance of his legal rights and under mistake of fact and because of the illegal demands made upon him therefor by the

said defendant company, and because of the information given him by the said defendant that said payments were necessary to keep his said insurance in force and said policies from lapsing; and that said amount of excessive payments is to the plaintiff unknown, but the same, with interest to date, is about nine hundred dollars (\$900.00), is held in trust by said defendant company for this plaintiff.

Plaintiff further alleges that said defendant continues to demand of him and to compel him to pay to it, the said defendant, said excessive amounts, and threatens that if plaintiff does not pay said excessive amounts, viz., at the rate of four dollars per assessment per thousand of insurance, it, the said defendant, will declare said policies forfeited, lapsed and no longer in force.

That he will thereby suffer great and irreparable injury, for which he has no adequate remedy at law.

16 Wherefore, plaintiff prays that an account may be taken of the amounts so paid to the defendant, in excess of two dollars and sixty-eight cents per assessment per thousand of insurance and held by the defendant in trust for this plaintiff; that upon the determination of such amount that the same may be by this court adjudged and decreed to and be due to the defendant; that pending the hearing of this cause that a restraining order issue against defendant restraining it from demanding and receiving from said plaintiff any amount in excess of \$2.68 per assessment per one thousand dollars of insurance in force under said certificate of insurance; and restraining said defendant from forfeiting or lapsing said certificates of insurance for the non-payment of said excessive amounts; and that upon final hearing hereof that said restraining order be made perpetual, and for such other and further relief as the justice and equity of the case may require.

SMITH W. BENNETT,
HUGH M. BENNETT,
Attorneys for Plaintiff.

[Duly verified.]

17

"EXHIBIT A."

Certificate of Membership.

Benefit Not to Exceed \$1,000.

No. —.

Safety Fund Department.

Age 45.

Sample Policy.

The

Hartford Life and Annuity Ins. Co.

of

Hartford, Connecticut,

In consideration of the representations, agreements and warranties made in the application herefor, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, to create a Safety Fund, as hereinafter described, and of Three Dollars per annum, for expenses, to be paid as hereinafter conditioned and of the further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Alonzo J. Douds, with the following agreements:

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed, five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one Million Dollars all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limi-

tation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that so long as any Certificate of Membership in the Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

19 Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required, together with any balance due said Company)—to his estate, otherwise to his legal representatives within ninety

20 days after the receipt of such proofs, upon presentation and surrender of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

1. Application Made Part of Contract.—The application on the faith of which this Certificate issues is hereby referred to and made part of this contract.

2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for expenses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by monthly or other pro rata installments of the same in advance for periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assessment in accordance with the Table of Graduated Assessment Rates, as printed hereon, within thirty days from day on which notice bears date. And further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement with the Trustees aforesaid, a copy of which is printed hereon and hereby made a part of this contract; all such payments to be made direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission: And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if either the monthly dues, assessments or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustee of the Safety Fund; and that if a legal and just claim to benefit, under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, or before January 1, 1885, and the sum collected on the assessment to be made in such event shall be paid over, as hereinbefore stipulated; or such claim shall arise after said Fund shall have accumulated to said amount or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, or delivered by an agent of the Company, shall be deemed a legal and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary, showing such facts, shall be taken and accepted as conclusive evidence of the mail-

ing of such notice, and of the facts aforesaid, as set forth in such transcript.

5. Change of Residence of Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining under ground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delirium tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, misrepresentation, or false statement or statement not true made in the application on which this Certificate issues; or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from

the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. And that in case any County, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company on account of any moneys collected hereon, said member agrees to pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to hold this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

11. Powers of Agents.—Agents of the Company can not alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive money or assessments, dues, or Safety Fund deposits maturing and payable after the issue of this Certificate.

In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 2nd day of May, one thousand eight hundred and eighty-three.

(Signed)
[SEAL.]

T. R. FOSTER,
President.

(Signed) W. A. COWLES,
Ass. Secretary.

(Agents of the Company are not authorized to make any indorsements on this certificate.)

Trustee's Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws

of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to-wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual distribution of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said department at

27 "such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars all subsequent receipts therefor shall be distributed by the said Company in like manner as the interest."

"Said Company further agrees that if at any time, after said Fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if and legally due, to pay the maximum indemnity provided for by the terms of any Certificates issued in said department, and such Certificate shall be presented for payment to said Trustee by the legal holder, thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and distribute the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list, under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and

"that payment thereof has been demanded and refused, or the"
"duly attested copy of a final judgment obtained thereupon in any"
"court of competent jurisdiction, satisfaction of which has been"
"neglected or refused for a period of sixty days from this date."
"And said Company further agrees that so long as any Certificate"
"of membership in its Safety Fund Department shall remain in"
"force, said Fund shall be in no wise chargeable or liable for any use"
"or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders, as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereinafter provided, to
29 be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

30 That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided

no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to

31 put the party of the second part in possession of the information required for the making of a proper distribution thereof as agreed with its Certificate holders.

All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the Certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their

32 terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In witness whereof, the party of the first part has affixed hereunto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,

By E. H. CROSBY,
President, and
STEPHEN BALL,
Secretary.

[SEAL.]

SECURITY COMPANY,
By ROBERT E. DAY,
President, and
WILLIAM L. MATSON, *Treasurer.*

33 Table of Graduated Assessment Rates for Death Losses for Every \$1,000 of a Total Indemnity of \$1,000,000.

| Age. | Rate. | Age. | Rate. | Age. | Rate. |
|--------------|--------|--------|--------|--------|--------|
| 15 to 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.35 |
| 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| 23.... | .69 | 37.... | 1.03 | 50.... | 1.47 |
| 24.... | .71 | 38.... | 1.06 | 51.... | 1.54 |
| 25.... | .73 | 39.... | 1.09 | 52.... | 1.63 |
| 26.... | .75 | 40.... | 1.12 | 53.... | 1.72 |
| 27.... | .77 | 41.... | 1.14 | 54.... | 1.81 |
| 28.... | .79 | 42.... | 1.16 | 55.... | 1.92 |
| 29.... | .81 | 43.... | 1.18 | 56.... | 2.03 |
| 30.... | .83 | 44.... | 1.20 | 57.... | 2.15 |
| 31.... | .85 | 45.... | 1.22 | 58.... | 2.32 |
| 32.... | .88 | 46.... | 1.25 | 59.... | 2.50 |
| 33.... | .91 | 47.... | 1.30 | 60.... | 2.68 |
| 34.... | .94 | | | | |

These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting.

Received of The Hartford Life and Annuity Insurance Company,
of Hartford, Conn., — in full for all claims under this Certificate,
No. —, on the life of — — —, deceased.

— — —,
Beneficiary.

— — —,
Beneficiary.

Witness:
— — —.

(Back of Policy.)

This Company has no agents authorized to receive money on
Assessments, Dues, or Safety Fund.

34

No. 34,501.

Safety Fund Department.

Certificate of Membership.

Benefit Not to Exceed \$1,000.

Issued by The

Hartford Life and Annuity Insurance Co.,

Hartford, Conn.

Name, Alonzo J. Douds.

Agent, — — —.

Read carefully all the conditions of this certificate.

No person should be a party to a contract without knowing all its
conditions.

After an Agent has delivered this Certificate, and collected the
Admission Fee, no other payment connected with the indemnity
under this Certificate must be made to the agent without the produc-
tion of a receipt signed by the Company's Secretary.

Always give number of this certificate in writing to home office.

E. J. Thomas, Gen'l Agent.

Know all men by these Presents, That the undersigned bene-
ficiary— named in the within Certificate, issued to — — — in
consideration of — have sold, assigned and conveyed to — — —
of — — — County of — — —, State of — — —, and to h— heirs and assigns
forever, all — right, title, and interest in the within Certificate of
Membership, subject to the terms and conditions thereof.

I hereby constitute the said assignee or assignees its attorney, in
my name, but to h— own use, to take all legal measures
35 which may be proper to keep in force said Certificate and
finally collect all amounts due and to become due thereunder,
with power of substitution.

Witness my hand and seal this — day of —, 18—.
— —. [SEAL.]

If more than one beneficiary, they can sign below.

Answer.

[Filed December 13, 1918.]

Defendant has at all times herein protested against and objected to the jurisdiction of this court over it and the subject matter of this cause, and, having appeared solely for the purpose and without waiving the jurisdiction or entering an appearance herein, filed a demurrer and an amended demurrer to the jurisdiction of this court on the grounds set forth in said demurrers, and said demurrers having been overruled over its objection and exception, and the court having ordered the defendant to plead here, defendant, renewing its protest against and objection to the jurisdiction of the court over it and the subject matter of this action herein, files this its answer to the petition, being forced thereto by the overruling of such protest and objection and by the order of the court herein, which is by this defendant claimed to be erroneous and in violation of its rights under the law of the land and of the provisions of the Constitution of the United States and of the amendments thereto.

Defendant is a foreign corporation organized and existing under the laws of the State of Connecticut; its officers reside in and conduct the business of said company in the State of Connecticut; its office, books, papers and records are all in the State of Connecticut; that it has no officers in the State of Ohio; that the remedy of an injunction, accounting and money judgment sought in this proceeding is outside and beyond the jurisdiction of this court; that this court is without the power to enforce the remedy sought by the plaintiff in this proceeding, and that such remedy is wholly and entirely within the jurisdiction of the court of Connecticut, to which application should be made for the relief herein prayed for, all for the reasons herein fully set forth.

Defendant says that in and by the petition herein plaintiff charges and avers that the defendant has assessed the plaintiff in a sum in excess of that provided by the terms of the contracts or certificates of membership or policies of insurance referred to in said petition, in this: that the assessment rate provided for by said certificates or policies of insurance, on and after the plaintiff reached the age of sixty (60) years, was two dollars and sixty-eight (\$2.68) per assessment for each one thousand dollars (\$1,000) of insurance; that defendant has assessed plaintiff in excess of said rate of two dollars and sixty-eight cents (\$2.68) per assessment for each one thousand dollars (\$1,000) of insurance, after he reached the age of sixty (60) years; that the amount of the excessive assessments paid by the plaintiff after he reached the age of sixty (60) years is to him unknown, but that the same with interest, is about nine hundred dollars

(\$900), and plaintiff prays the court that an accounting be
 37 taken and ordered so as to ascertain the amount of such excess
 in each of the said several assessments levied by the defendant
 against the plaintiff since the — day of —, 1898, when the plain-
 tiff reached the age of sixty (60) years.

Defendant further says that at the time the alleged policies
 insurance or certificates of membership were entered into between
 the parties hereto, the defendant was conducting and operating a
 department of life insurance upon the mutual or assessment plan
 known as the Safety Fund Department, in which said department
 and under which plan of insurance the certificates or policies of
 insurance sued on herein were issued, and that the corporate name
 of the defendant at the time said certificates or contracts of insurance
 were issued was the Hartford Life and Annuity Insurance Company,
 that subsequently defendant changed its name to Hartford Life
 Insurance Company, and at all times herein stated has continued to
 operate and conduct its Safety Fund Department, in which it does
 the business of life insurance, upon the assessment or mutual plan
 as aforesaid, of which department plaintiff was a member and held
 said certificates or policies sued on herein.

Defendant further says that the assessments referred to in plain-
 tiff's petition were levied quarterly, and since the — day of —
 1898, more than seventy (70) assessments have been levied against
 the plaintiff on each of said certificates or policies of insurance, and
 that the inquiry and accounting sought to be had by the petition
 involves, therefore, an inquiry into each of the said several
 38 assessments so levied on each of said certificates or policies of
 insurance.

Defendant further says that, by the terms of said policies or cer-
 tificates sued on herein, it is expressly provided that "the rates de-
 crease in proportion as the total indemnity in force increases above
 one million dollars;" which is to say, the assessment rate provided
 for in said certificates is the rate of assessment at each age thereon
 stated to be levied for each individual death loss of one thousand
 dollars (\$1,000), upon the basis of one million dollars (\$1,000,000)
 of outstanding insurance or indemnity in force at the time of the
 levy of each of said assessments, and that if the total indemnity of
 insurance in force at the time of the levy of such assessment exceed
 the sum of one million dollars (\$1,000,000), the rate of assessment
 is to be proportionately decreased, and that where there is more than
 one death loss of one thousand dollars (\$1,000) to be assessed for at
 the time of the levy of such assessment, the rate and the amount of
 such assessment or assessments is accordingly increased by the num-
 ber, per one thousand dollars (\$1,000) of such death losses and that
 it is so provided by said certificates or policies of insurance.

Defendant further says that at the time of each of the assessments
 complained of in the petition herein, the indemnity or insurance in
 force was largely in excess of one million dollars (\$1,000,000) and
 varied in amount at the time of each assessment; that at each assess-
 ment there was in excess of one death loss of one thousand dollars

39 (\$1,000) to be assessed for; that the number of deaths so to be assessed for at the time of such assessments varied and at times such death losses exceed the sum of sixty thousand dollars (\$60,000); so an inquiry as to the proper rate of assessment on said policies or certificates involved and required the ascertainment of the total amount of insurance or indemnity in force at the time each assessment was levied, as well as the number of deaths for which each assessment was levied.

Defendant further says that in the petition herein the plaintiff asks and prays that the court perpetually enjoin defendant from levying assessments against him in excess of two dollars and sixty-eight (\$2.68) "per assessments per thousand dollars of insurance in force under said certificates of insurance," regardless of the number of deaths or the amount of indemnity in force, and to have defendant account to plaintiff for that proportion or amount of the assessments paid by the plaintiff under said certificates which are averred to be in excess of the rate of "\$2.68 per assessment per thousand dollars of insurance in force under said certificates of insurance," regardless of the amount of indemnity in force or the number of deaths at the time when said assessments were levied, and to recover judgment against defendant for the difference between the assessments actually levied and the amount of assessments so to be ascertained.

Defendant further says that the remedy of injunction so sought by the plaintiff in this action is beyond the power of this court to grant, for the reason that the defendant, against whom the injunction is sought, is a non-resident corporation.

40 Defendant further says that the remedy of accounting and of a money judgment based upon such accounting as is prayed for by the plaintiff would require a complete and exhaustive visitation of the affairs of the defendant at its home office in Hartford, Connecticut, and an examination of all of the books and records for many years past, that is to say, from 1898 to 1916, and would amount to an interference with the internal management of the defendant, a foreign corporation, contrary to and in excess of the powers of this court under such circumstances; that such inquiry and accounting would involve a computation of a long, intricate and involved account based upon data which exists in and can only be ascertained from the books and records of the defendant located in the State of Connecticut, and can only be properly taken by a commissioner appointed by the courts of a state having full jurisdiction of the defendant and of its officers; and, while this court may have jurisdiction to decree such an accounting under some conditions, it is beyond the jurisdiction and power of this court to decree such an accounting against defendant, a non-resident corporation; that such remedy, it exists and is enforced on behalf of plaintiff in this state, exists with respect to every other member holding similar certificates or policies of the Safety Fund Department of the defendant, and the defendant says that it has many thousands of members and certificate holders in the Safety Fund Department located

41 throughout the different states of the United States, each of whom holds a certificate similar to that held by plaintiff; that said members aggregate some fifty thousand (50,000) in number; that the ascertainment of the excess, if any, charged against the plaintiff on each of said several assessments involves, likewise, the ascertainment of the alleged excess charged against each and every other member of the Safety Fund Department of the defendant, as all of said members of said Safety Fund Department were assessed of the same basis, plan and table of rates as the plaintiff herein; that no intelligent or just judgment as to the amount of the claim or excess could be ascertained without entering into an elaborate accounting, involving the ascertainment of the proper assessment to be made against each and every other member of the Safety Fund Department of the defendant, and that if the remedy sought by the plaintiff were granted, similar or like remedies might be demanded by each of said several members in each of the several states of the United States, which would amount, in effect, to an extermination of the business of the defendant.

Defendant says that if this court proceeds with this cause and entertains jurisdiction hereof and grants the relief prayed for by the plaintiff, it will greatly embarrass and obstruct defendant in the prosecution of its business, so that any appeal from any judgment or decree in this cause granting such relief would be wholly inadequate to preserve and protect the rights of defendant and members of the Safety Fund Department; and that if this court shall proceed to

42 determine the issues made by the petition and shall thereupon undertake to review the propriety of past acts of the defendant touching the levy of assessments under said certificates, the court shall attempt, by the decree of this court to fix and adjudge what amount shall conceive to be the proper amount to be charged by defendant against the plaintiff as assessments under said certificates, shall attempt, by its writ of injunction, to enjoin defendant from levying upon and collecting assessments from the plaintiff under such certificates, except in accordance with the amount and limit fixed and determined by this court; that such injunction will continue in force pending any appeal which might be taken from the decree or judgment by this court, and, in the meantime, defendant would be greatly embarrassed and obstructed in the discharge of its obligations to the members of the Safety Fund Department, and in the orderly prosecution of its business, and all this without jurisdiction or power to make, grant or enforce said remedy. And if an injunction be granted by this court it would be necessary for the defendant to either obey or disregard the same; that if it obeys the injunction it will do so not only with the damaging result above mentioned, but also at the risk of being required to respond and account for its action to such other members of its Safety Fund Department as might draw in question the validity of such assessments.

Defendant says that the courts of Connecticut, in which defendant is domiciled, have the sole and exclusive jurisdiction and

to entertain a suit having for its object and purpose the determination of what constitutes a valid and proper assessment under certificates issued by the Safety Fund Department of the defendant and the granting of the relief prayed for by the plaintiff herein; that if the courts of Connecticut should by their decrees and judgments, determine that the proper amount of the assessment which should be levied by the defendant against the members of its Safety Fund Department is different from the amount of the assessments which this court may, by its decree or judgment, decide to be the correct or proper amount, then defendant will be subject to conflicting decrees of different courts on the same subject matter, thereby giving rise to unseemly conflict between the courts of this state and the courts of Connecticut; that any change which this court should decree to be made in the manner or method or the amount of defendant's assessments levied on the certificates in suit, would disturb and disarrange, pending any appeal from this court, the relations, obligations, and duties between the defendant and the whole body of its members of the Safety Fund Department; that no decree could or can be entered by this court which would not amount to a most complete attempt to regulate defendant's internal affairs and to review the propriety of defendant's dealings in the past and future with the members of its Safety Fund Department; that defendant has no officers within the State of Ohio upon whom any writ of injunction or similar orders which might be issued by this court could or can be served; that defendant has no property in the State of Ohio; that unless this court desists from making further orders and decrees in this cause and from entertaining jurisdiction herein, defendant will be required to either suffer a judgment by default to be taken against it in this cause or offer evidence herein and at great expense support this answer by proofs upon the hearing of this cause and to go to trial on the merits thereof, and thereby defendant and its transactions and internal affairs would be subject to the visitation, regulation and control of this court; that, in order to meet by proof the issues so raised by the petition, it would be necessary to examine all of the accounts between defendant and all of its members of the Safety Fund Department, of whom there are a great number throughout the states of the United States, from the time plaintiff alleges he has been excessively charged or assessed, to-wit, from the — day of —, 1898, up to the present time. Defendant says that in order for it to comply with such order or decree of accounting it would become necessary for defendant to bring before this court its books, papers and records touching the matter in controversy, at a great disturbance and destruction of the orderly and proper transaction of its business; that in order to make the showing demanded of the defendant by the plaintiff in said petition it will be necessary for defendant to take its officers and employees away from their usual and ordinary duties in the home office of defendant in the State of Connecticut and to require them to devote much of their time for weeks to the proper presentation and preparation of its defense herein; that it will become necessary for the

officers and employees of the defendant, in order to make a proper defense herein, to leave their duties at the home office of the company, travel to the State of Ohio and remain in attendance upon said court for an indefinite time, at the great hardship and oppression of the defendant.

Defendant further says that the remedy of an injunction and accounting sought by the plaintiff is, in substance and effect, an effort to have this court regulate and control the conduct of the internal affairs of defendant at its domicile in the State of Connecticut, and is, therefore, beyond the jurisdiction of this court; that the granting of said relief by this court would be without due process of law, and would deprive defendant of its property without due process of law, contrary to and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States; that a decree or judgment entered in said cause adjudging the return to the plaintiff or portions of assessments previously made by defendant upon plaintiff as a member and certificate holder in the Safety Fund Department, as prayed in the petition, would likewise be a regulation of the conduct and internal affairs of the defendant at its domicile in the State of Connecticut, and the granting of said relief would deprive defendant of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States.

Defendant further alleges that all of the assessments complained of by the plaintiff herein were levied for the purpose of paying the death losses incurred by the deaths of members holding similar certificates in said department of the defendant company and the proceeds of said assessments have been applied to the payment of death losses.

Still protesting against and objecting to the jurisdiction of the court in this cause, and answering herein because of the orders of the court herein, which defendant alleges are erroneous and in violation of defendant's rights as aforesaid, defendant admits that it is a corporation duly created and existing under the laws of the State of Connecticut, formerly under the name of the Hartford Accident Insurance Company; that thereafter its name was duly changed to The Hartford Life and Accident Insurance Company, and thereafter its name was again changed to The Hartford Life and Annuity Insurance Company, and its name was thereafter again changed to The Hartford Life Insurance Company; that it was formerly licensed to do and engage in carrying on its business in the State of Ohio; that on or about the second day of May, 1883, for the consideration stated therein, it issued and delivered to the plaintiff three (3) certain benefit certificates in its Safety Fund Department in the sum of one thousand dollars (\$1,000) each, or a total of three thousand dollars (\$3,000), payable upon the death of the plaintiff, as provided in said certificates, a copy of one of which said certificates attached to the petition and marked "Exhibit A;" that upon the backs of such certificates were printed certain tables of graduated assessment rates; that the plaintiff paid the assessments made and levied against it by defendant under said certificates, but defendant denies that the assessments made and levied against

the plaintiff under such certificates, were not in accordance and in compliance with the terms of said certificate, and denies that plaintiff was assessed in excess of the amount that was leviable by the said certificates or by the rates provided for in and on such certificate.

Defendant denies each and every fact, statement, and allegation in the petition not herein admitted.

Defendant further alleges that the assessments so paid and complained of by the plaintiff herein under said certificates were voluntary payments on the part of the plaintiff.

Defendant further says that plaintiff had, during the period from the — day of —, 1898, up to and until the time when the certificates held by the plaintiff lapsed and become void by reason of his failure to pay the assessments properly made thereunder, and up to the filing of this action, knowledge and the means of knowledge of his rights, duties and obligations under said certificates of membership, and, with knowledge and the means of knowledge, of all the facts, voluntarily and without coercion, improper influence, or protest, paid each of the several assessments made and levied by defendant upon the certificates so held by plaintiff, in the aggregate number of approximately seventy, (which amounts so collected being disbursed to the beneficiaries under other certificates matured by death), and is now estopped to deny the validity or propriety of said assessments; that the larger portion of the alleged cause of action set forth in the petition did not accrue within six years next before the commencement of this action, and is therefore barred by the Statute of Limitations in such cases made and provided.

Wherefore, defendant prays that its protest and objection heretofore and now made herein against and to the jurisdiction of this court over it and the subject matter of this action herein shall be sustained; that its rights under the laws and Constitution of the United States and amendments thereto shall be maintained and protected and that this court shall hold it is without jurisdiction over the defendant and the subject matter of this action.

JONES, HOCKER, SULLIVAN &
ANGERT AND
ARNOLD & GAME,

Attorneys for Defendant.

[Duly verified.]

Reply of Plaintiff.

[Filed January 10, 1920.]

Now comes the plaintiff and for his first reply to the answer of the defendant or in so far as he is informed it is necessary to reply thereto, says:

1. He admits defendant is a foreign corporation organized and existing under the laws of the State of Connecticut.

2. He admits that in his petition he charges and avers that said defendant, Hartford Life Insurance Company, has assessed
 49 said plaintiff in a sum in excess of that provided by the terms of the contracts or certificates of membership issued to plaintiff by defendant company.

3. He admits that at the time the certificates of membership were entered into between the parties hereto, the defendant was conducting and operating a department of its life insurance known as the Safety Fund Department, and that said certificates were issued in said department.

4. He admits that said assessments were levied quarterly on said certificates of insurance.

5. He admits that in the petition herein the plaintiff asks and prays that the court perpetually enjoin the defendant from levying assessments against him in excess of two dollars and sixty-eight cents per assessment per one thousand dollars of insurance in force under said certificate of insurance. And with the exception of the which is herein admitted plaintiff denies each and every other allegation in defendant's answer contained, save and except those allegations contained therein which are admissions of allegations and statements contained in plaintiff's petition.

Second. Plaintiff, for his second reply to defendant's answer, says that in an action heretofore pending in the Supreme Court of the State of Connecticut, entitled Dresser vs. the Hartford Life Insurance Company, found in the 80th Conn. Supreme Court Report page 681, in which this defendant was there a defendant, and in which case the same form of policy or certificate of insurance as is set forth in plaintiff's petition was then directly involved, the following language quoted by the defendant in its answer from the certificate of insurance held by the plaintiff, to wit, "The rates decrease in proportion as the total indemnity in force increases above one million dollars," was construed by said court to mean that the rates will decrease as the total amount of indemnity increases and that there is no suggestion that they can ever be increased, and it was held, determined and adjudged by said court that they, the rates, cannot increase.

Plaintiff says that the determination, order and judgment of said court is still in full force and effect, unreversed and unmodified, and that by reason thereof the construction given by said court to said certificate of insurance is binding upon said defendant and is a judicata of the claims made by said defendant to the contrary, in said answer.

SMITH W. BENNETT,
Attorney for Plaintiff

[Duly verified.]

Report of Referee, George B. Okey.

[Filed November 28, 1919.]

Upon motion of the plaintiff for a reference of the cause to take the evidence of the parties and witnesses, to determine the questions of law and fact involved herein and to state thereon his conclusions separately, the court, finding that the cause is one in which the parties are not entitled by the Constitution to a trial by a jury, ordered

“that said cause be referred to Honorable George B. Okey, who as such referee, is directed to reduce the testimony of the parties and witnesses to writing and to have the testimony thereof subscribed by each witness, unless the signature thereto is waived by the parties hereto.

Said referee further has authority to settle all questions of pleadings in said cause and to permit parties hereto to amend or supplement the pleadings herein if necessary, and that said referee make report to this court under this order without delay.”

The undersigned, assuming that the court intended by its order to confer upon him the general powers of a referee under the Code of Civil Procedure, having taken the required oath, proceeded, at the convenience of the parties, to take the testimony offered, and upon the conclusion thereof, to hear and to consider arguments and briefs of the respective counsel.

The plaintiff in the action seeks to compel the defendant specifically to perform, according to their terms, three membership certificates, which he holds in the Safety Fund Department of the defendant company, and to require from the defendant to account for and pay back certain payments claimed by him to have been made in excess of those contemplated in his contract; and he also prayed for an injunction to restrain the defendant from demanding and collecting such alleged excessive payments and from lapsing his membership.

The demurrer and the amended demurrer of the defendant to the petition, challenging the jurisdiction of the court over it and the subject matter of the cause, having been overruled, the defendant, in its answer, again specifically challenges such jurisdiction, and alleges that the granting of the relief prayed for by the plaintiff would deprive it of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States.

It further alleges that all of the assessments complained of by the plaintiff were levied for the purpose of paying the death losses incurred by the death of members holding certificates similar to those of the plaintiff in the Safety Fund Department of the defendant company, and that the proceeds of said assessments have been applied to the payments of death losses.

The defendant further alleges that the larger portion of the alleged cause of action did not accrue within six years next before the commencement of the action, and is therefore barred by the statute of limitations.

Findings of Fact.

Your referee, from the evidence adduced before him, finds and concludes the facts to be as follows:

The defendant company was created by act of the General Assembly of the State of Connecticut, originally under the name of The Hartford Accident Insurance Company. Under authority of successive legislative acts, it changed its name first to that of The Hartford Life and Accident Insurance Company, later to that of The Hartford Life and Annuity Insurance Company and finally to that of The Hartford Life Insurance Company.

On or about the second day of May, 1883, the defendant company issued to the plaintiff three certificates of membership in its Safety Fund Department, each for the sum of \$1,000. They were all of the same tenor and effect. The following is a copy of one of said certificates:

53

Certificate of Membership.

Benefit Not to Exceed \$1,000.

No. —.

Safety Fund Department.

Age 45.

The

Hartford Life and Annuity Ins. Co.

of

Hartford, Connecticut,

In consideration of the representations, agreements and warranties made in the application herofor, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, to create a Safety Fund, as hereinafter described, and of Three Dollars per annum, for expenses, to be paid as hereinafter conditioned and of the further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Alonzo J. Douds, with the following agreements:

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates

in force in said Department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars all subsequent receipts thereof shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or shall neglect, if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division.

54 The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that so long as any Certificate of Membership in the Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

55 Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required,

56 together with any balance due said Company)—to his estate, otherwise to his legal representatives within ninety days after the receipt of such proofs, upon presentation and surrender of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

1. Application Made Part of Contract.—The application on the faith of which this Certificate issues is hereby referred to and made part of this contract.

2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for expenses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by monthly or other pro rata installments of the same in advance for periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assessment in accordance with the Table of Graduated Assessment Rates as printed hereon, within thirty days from day on which notice bears date. And further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement with the Trust-
 57 tees aforesaid, a copy of which is printed hereon and hereby made a part of this contract; all such payments to be made direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission. And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if either the monthly dues, assessments, or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustee of the Safety Fund; and that if a legal and just claim to benefit, under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, or before January 1, 1885, and the sum collected on the assessment to be made in such event shall be paid over, as hereinbefore stipulated; or such claim shall arise after said Fund shall have accumulated to said

amount, or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said
58 Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, or delivered by an agent of the Company, shall be deemed a legal and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary, showing such facts, shall be taken and accepted as conclusive evidence of the mailing of such notice, and of the facts aforesaid, as set forth in such transcript.

5. Change of Residence of Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining under ground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said
59 Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delir-um tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—or while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, misrepresentation, or false statement or statement not true made in the application on which this Certificate issues; or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. And that in case any Country, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company on account of any moneys collected hereon, said member agrees to pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to hold this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

11. Powers of Agents.—Agents of the Company can not alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive money or assessments, dues, or Safety Fund deposits maturing and payable after the issue of this Certificate.

In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and

delivered this contract, at Hartford, Conn., this 2nd day of May, one thousand eight hundred and eighty-three.

[SEAL.]

(Signed)

T. R. FOSTER,
President.

(Signed) W. A. COWLES,
Ass. Secretary.

(Agents of the Company are not authorized to make any indorsements on this certificate.)

62

Trustee's Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to-wit:

"That said Company will deposit said sum of ten dollars, when" received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever there-after said sum shall be attained, make a semi-annual distribution of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said department at such times,"

"who shall have contributed five years prior to the date of" "any such division their stipulated proportion of said Fund," "by applying the same to the payment of their future dues" and assessments; and that, whenever said Fund shall amount to one million dollars all subsequent receipts therefor shall be distributed by the said Company in like manner as the interest."

"Said Company further agrees that if at any time, after said Fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if and legally due, to pay the maximum indemnity provided for by the terms of any Certificates issued in said department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by"

"satisfactory evidence, as hereinafter provided, of its failure to pay,"
 "after demand upon it within the time herein stipulated for limita-"
 "tion of action, then it shall be the duty of said Trustee to at once"
 "convert said Safety Fund into money and distribute the same (less"
 "the reasonable charges and expenses for the management and con-"
 "trol of said Fund)" among all the holders of Certificates then in "
 "force in said department, or their legal representatives, in the pro-"
 "portion which the amount of each of their Certificates shall bear"
 "to the amount of the whole number" of such Certificates in force;
 "and that in such event it shall file with said Trustee a correct list,"
 "under oath, of the names, residences and amounts of the"
 64 "Certificates of all members entitled to participate in such di-"
 "vision. The evidence referred to above to be either certifi-"
 "cation by said Insurance Company's President or Secretary that a "
 "claim is justly and legally due and that payment thereof had been "
 "demanded and refused, or the duly attested copy of a final judg-"
 "ment obtained" thereupon in any court of competent jurisdiction.
 "satisfaction of which has been neglected or refused for a period of "
 "sixty days from this date."

"And said Company further agrees that so long as any Certificate "
 "of membership in its Safety Fund Department shall remain in "
 "force, said Fund shall be in no wise chargeable or liable for any "
 "use or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the
 covenants and agreements hereinafter contained on the part of the
 party of the second part and in accordance with its agreement with
 its Certificate holders, as hereinbefore recited, does hereby appoint
 the party of the second part Trustee as aforesaid and covenants and
 agrees with it and its successors in said trust to deposit with said
 Trustee, as soon as received, the sum of ten dollars on each thousand
 dollars of the amount of each and every Certificate of membership
 issued by it in the aforesaid department until said Fund shall amount
 to one million dollars, to be by said Trustee held in trust and ac-
 cumulated as hereinafter agreed, and the income thereof, less the rea-
 sonable compensation and expense of said trust, to be paid over to

the party of the first part, as hereinafter provided, to be used
 65 by the party of the first part in accordance with the herein-
 before recited agreements: And when said Trustee shall pay
 the income, as above, to the party of the first part, or, shall make
 any other payments from said Fund, as required by the terms hereof,
 the liability of said Trustee on the amount so paid shall cease:
 being understood and agreed that said Fund belongs to the party
 of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors, in
 consideration of such deposits and of a reasonable compensation for
 its services, and the necessary expenses of managing said trust, com-
 mits and agrees with the party of the first part and its successors and
 with each of the holders of the aforesaid Certificates that it will re-
 ceive, hold, manage and dispose of all said deposits made with it by
 said Insurance Company, principal and income, in accordance with

the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

66 That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper distribution thereof as agreed with its Certificate holders.

67 All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing and selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in and covered by such reasonable charge as shall be made

for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with the

68 terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to said successor.

In Witness Whereof, the party of the first part has affixed her seal unto the corporate seal of said Insurance Company and caused the presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,

By E. H. CROSBY,
President, and
STEPHEN BALL,

Secretary.

[SEAL.]

SECURITY COMPANY,

By ROBERT E. DAY,
President, and
WILLIAM L. MATSON,

Treasurer.

69 *Table of Graduated Assessment Rates for Death Losses for Every \$1,000 of a Total Indemnity of \$1,000,000.*

| Age. | Rate. | Age. | Rate. | Age. | Rate. |
|--------------|--------|--------|--------|--------|--------|
| 15 to 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.35 |
| 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| 23.... | .69 | 37.... | 1.03 | 50.... | 1.47 |
| 24.... | .71 | 38.... | 1.06 | 51.... | 1.54 |
| 25.... | .73 | 39.... | 1.09 | 52.... | 1.63 |
| 26.... | .75 | 40.... | 1.12 | 53.... | 1.72 |
| 27.... | .77 | 41.... | 1.14 | 54.... | 1.81 |
| 28.... | .79 | 42.... | 1.16 | 55.... | 1.92 |
| 29.... | .81 | 43.... | 1.18 | 56.... | 2.03 |
| 30.... | .83 | 44.... | 1.20 | 57.... | 2.15 |
| 31.... | .85 | 45.... | 1.22 | 58.... | 2.32 |
| 32.... | .88 | 46.... | 1.25 | 59.... | 2.50 |
| 33.... | .91 | 47.... | 1.30 | 60.... | 2.68 |
| 34.... | .94 | | | | |

These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting.

Received of The Hartford Life and Annuity Insurance Company, of Hartford, Conn., —, in full for all claims under this Certificate, No. —, on the life of — — —, deceased.

Beneficiary.

Beneficiary.

Witness:

(Back of Policy.)

This Company has no agents authorized to receive money on Assessments, Dues, or Safety Fund.

No. 34501.

Safety Fund Department.

Certificate of Membership.

70 Shortly after the certificates in question had been issued to the plaintiff, the defendant company made an effort to secure his assent and that of other persons in the State of Ohio holding like certificates, to a change or modification of the terms thereof, through means of a printed slip or rider to be signed by the certificate holder, and to be attached thereto, whereby he consented that assessments might be levied against his certificate in the same manner and for like amounts at the same attained age, as were levied against such certificates prior to the issuance of the particular certificate, which it was so sought to change. The effect

of which was to abrogate the provisions in the table of rates that after the holder arrived at the age of sixty years the rate should be \$2.68 for every \$1,000 of a total indemnity of \$1,000,000, and to permit an assessment, after the age of sixty years, up to \$4. The plaintiff, upon application to him by the special agent of the defendant company, who had been sent to him to secure his consent, refused to sign the slip or rider, or consent to the proposed change and declared that he would pay the increased assessments beyond \$2.68, after he had arrived at the age of sixty years under protest.

The plaintiff paid all the assessments upon his three certificates of membership that were issued and levied thereon by the defendant company, up until the time of his death which occurred, pending the suit, on the twenty-third day of January, 1919.

The following table shows the assessments that were issued and paid after the plaintiff reached the age of sixty years, which occurred in the year 1898, together with the mortality ratios actually used in each instance by the defendant company, the excess beyond the rate of \$2.68, and interest computed up to the first day of September, 1919.

| 71 | Date. | Quarterly call. | Amt. of insurance. | Age rate used. | Mortality ratio used. | Assessments. | | Overcharge. | Interest. |
|----|-----------|-----------------|--------------------|----------------|-----------------------|--------------|---------|-------------|-----------|
| | 1899. | | | | | | | | |
| | March | 82 | \$3,000 | \$2.86 | \$3.00 | \$25.74 | \$24.12 | \$1.62 | \$1.99 |
| | June | 83 | 3,000 | 2.86 | 3.00 | 25.74 | 24.12 | 1.62 | 1.97 |
| | September | 84 | 3,000 | 2.86 | 3.00 | 25.74 | 24.12 | 1.62 | 1.94 |
| | December | 85 | 3,000 | 2.86 | 3.00 | 25.74 | 24.12 | 1.62 | 1.92 |
| | 1900. | | | | | | | | |
| | March | 86 | 3,000 | 3.08 | 3.00 | 27.72 | 24.12 | 3.60 | 4.21 |
| | June | 87 | 3,000 | 3.08 | 3.00 | 27.72 | 24.12 | 3.60 | 4.16 |
| | September | 88 | 3,000 | 3.08 | 3.25 | 30.03 | 26.13 | 3.90 | 4.45 |
| | December | 89 | 3,000 | 3.08 | 3.25 | 30.03 | 26.13 | 3.90 | 4.39 |
| | 1901. | | | | | | | | |
| | March | 90 | 3,000 | 3.30 | 3.25 | 32.17 | 26.13 | 6.04 | 6.70 |
| | June | 91 | 3,000 | 3.30 | 3.25 | 32.17 | 26.13 | 6.04 | 6.61 |
| | September | 92 | 3,000 | 3.30 | 3.60 | 35.64 | 28.94 | 6.70 | 7.24 |
| | December | 93 | 3,000 | 3.30 | 3.35 | 33.16 | 26.93 | 6.23 | 6.63 |
| | 1902. | | | | | | | | |
| | March | 94 | 3,000 | 3.65 | 3.80 | 41.61 | 30.55 | 11.06 | 11.61 |
| | June | 95 | 3,000 | 3.65 | 3.80 | 41.61 | 30.55 | 11.06 | 11.45 |
| | September | 96 | 3,000 | 3.65 | 3.75 | 41.06 | 30.15 | 10.91 | 11.13 |
| | December | 97 | 3,000 | 3.65 | 3.25 | 35.59 | 26.13 | 9.46 | 9.51 |

| Date. | Quarterly call. | Amt. of insurance. | Age rate used. | Mortality ratio used. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|-------------------|--------------------------|--------------|-------------|-----------|
| 1903. | | | | | | | |
| March | 98 | 3,000 | 4.00 | 3.25 | 39.00 | 12.87 | 12.74 |
| June | 99 | 3,000 | 4.00 | 3.25 | 39.00 | 12.87 | 12.55 |
| September | 100 | 3,000 | 4.00 | 3.25 | 39.00 | 12.87 | 12.36 |
| December | 101 | 3,000 | 4.00 | 2.80 | 33.60 | 11.09 | 10.48 |
| 1904. | | | | | | | |
| March | 102 | 3,000 | 4.00 | 3.30 | 39.60 | 13.07 | 12.16 |
| June | 103 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 13.77 |
| September | 104 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 13.54 |
| December | 105 | 3,000 | 4.00 | 3.60 | 43.20 | 14.26 | 12.62 |
| 1905. | | | | | | | |
| March | 106 | 3,000 | 4.00 | 3.60 | 43.20 | 14.26 | 12.41 |
| June | 107 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 12.87 |
| September | 108 | 3,000 | 4.00 | 3.60 | 43.20 | 14.26 | 11.98 |
| December | 109 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 12.42 |
| 1906. | | | | | | | |
| March | 110 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 12.19 |
| June | 111 | 3,000 | 4.00 | 3.50 | 42.00 | 13.86 | 11.02 |
| September | 112 | 3,000 | 4.00 | 3.75 | 45.00 | 14.85 | 11.58 |
| December | 113 | 3,000 | 4.00 | 3.20 | 38.40 | 12.67 | 9.69 |

1907.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|-------|
| March | 114 | 3,000 | 4.00 | 3.50 | 42.00 | 28.14 | 13.86 | 10.39 |
| June | 115 | 3,000 | 4.00 | 3.55 | 42.60 | 28.54 | 14.06 | 10.33 |
| September | 116 | 3,000 | 4.00 | 3.20 | 38.40 | 25.73 | 12.67 | 9.12 |
| December | 117 | 3,000 | 4.00 | 3.00 | 36.00 | 24.12 | 11.88 | 8.38 |

1908.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|-------|
| March | 118 | 3,000 | 4.00 | 3.20 | 38.40 | 25.73 | 12.67 | 8.72 |
| June | 119 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 10.16 |
| September | 120 | 3,000 | 4.00 | 3.60 | 43.20 | 28.94 | 14.26 | 9.41 |
| December | 121 | 3,000 | 4.00 | 3.30 | 39.60 | 26.53 | 13.07 | 8.43 |

1909.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 122 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 9.48 |
| June | 123 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 9.26 |
| September | 124 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 9.03 |
| December | 125 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 9.73 |

1910.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 126 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 9.48 |
| June | 127 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 9.23 |
| September | 128 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 8.98 |
| December | 129 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 8.43 |

| 73 | Date. | Quarterly call. | Amt. of insurance. | Age rate used. | Mortality ratio used. | Assessments. | Overcharge. | Interest. |
|----|-----------|--------------------|-----------------------|-------------------|--------------------------|--------------|-------------|-----------|
| | 1911. | | | | | | | |
| | March | 130 | 3,000 | 4.00 | 4.40 | 52.80 | 17.42 | 8.88 |
| | June | 131 | 3,000 | 4.00 | 4.40 | 52.80 | 17.42 | 8.62 |
| | September | 132 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 7.98 |
| | December | 133 | 3,000 | 4.00 | 4.35 | 52.20 | 17.23 | 8.01 |
| | 1912. | | | | | | | |
| | March | 134 | 3,000 | 4.00 | 3.95 | 47.40 | 15.64 | 7.04 |
| | June | 135 | 3,000 | 4.00 | 5.65 | 67.80 | 22.37 | 9.73 |
| | September | 136 | 3,000 | 4.00 | 5.15 | 61.80 | 20.39 | 8.56 |
| | December | 137 | 3,000 | 4.00 | 3.77 | 45.24 | 14.93 | 6.05 |
| | 1913. | | | | | | | |
| | March | 138 | 3,000 | 4.00 | 3.95 | 47.40 | 15.64 | 6.10 |
| | June | 139 | 3,000 | 4.00 | 5.94 | 71.28 | 23.52 | 8.82 |
| | September | 140 | 3,000 | 4.00 | 4.86 | 58.32 | 19.25 | 6.93 |
| | December | 141 | 3,000 | 4.00 | 4.10 | 49.20 | 16.24 | 5.60 |
| | 1914. | | | | | | | |
| | March | 142 | 3,000 | 4.00 | 5.63 | 67.56 | 22.29 | 7.36 |
| | June | 143 | 3,000 | 4.00 | 5.52 | 66.24 | 21.86 | 6.89 |
| | September | 144 | 3,000 | 4.00 | 4.73 | 56.76 | 18.73 | 5.62 |
| | December | 145 | 3,000 | 4.00 | 4.67 | 56.04 | 18.49 | 5.27 |

1915.
 March 146
 June 147
 September 148
 December 149

1916.

March 150
 June 151
 September 152
 December 153

74 1917.

March 154
 June 155
 September 156
 December 157

1918.

March 158
 June 159
 September 160
 December 161

| | | | | | | | |
|--------------------------------------|------------|-------|------|------|-------|-------|------------|
| Interest to September 1st, 1919..... | 50.57 | 75.48 | 6.29 | 4.00 | 3,000 | 24.91 | 6.73 |
| | 43.09 | 64.32 | 5.36 | 4.00 | 3,000 | 21.23 | 5.41 |
| | 55.72 | 83.16 | 6.93 | 4.00 | 3,000 | 27.44 | 6.59 |
| | 37.39 | 55.80 | 4.65 | 4.00 | 3,000 | 18.41 | 4.14 |
| | | | | | | | |
| | 30.79 | 45.96 | 3.83 | 4.00 | 3,000 | 15.17 | 3.19 |
| | 59.25 | 88.44 | 7.37 | 4.00 | 3,000 | 29.19 | 5.69 |
| | 53.87 | 80.40 | 6.70 | 4.00 | 3,000 | 26.52 | 4.78 |
| | 42.69 | 63.72 | 5.31 | 4.00 | 3,000 | 21.03 | 3.47 |
| | | | | | | | |
| | 42.61 | 63.60 | 5.30 | 4.00 | 3,000 | 20.99 | 3.15 |
| | 60.14 | 89.76 | 7.48 | 4.00 | 3,000 | 29.62 | 4.00 |
| | 60.22 | 89.88 | 7.49 | 4.00 | 3,000 | 29.66 | 3.56 |
| | 57.08 | 85.20 | 7.10 | 4.00 | 3,000 | 28.12 | 2.95 |
| | | | | | | | |
| | 59.01 | 88.08 | 7.34 | 4.00 | 3,000 | 29.07 | 2.62 |
| | 54.35 | 81.12 | 6.76 | 4.00 | 3,000 | 26.77 | 2.01 |
| | 55.07 | 82.20 | 6.85 | 4.00 | 3,000 | 27.13 | 1.63 |
| | 39.64 | 59.16 | 4.93 | 4.00 | 3,000 | 19.52 | .80 |
| | | | | | | | |
| | \$1,239.82 | | | | | | \$617.33 |
| | 617.33 | | | | | | |
| Total..... | | | | | | | \$1,857.15 |

75 After the demurrers of the defendant company had been overruled, it commenced a proceeding in prohibition in the Supreme Court of Ohio, in which it prayed for a writ of prohibition against the plaintiff and the judges of the Court of Common Pleas of and for Franklin county, Ohio, to prohibit Douds from prosecuting and the judges from proceeding in the case, upon the ground that the inquiry upon which the relief prayed for herein must necessarily require a visitation of the affairs of the company at its home office in Hartford, Connecticut; would amount to an interference with the internal management of a foreign corporation, beyond the jurisdiction of the court of any state other than Connecticut; that the courts of other states other than Connecticut could not enforce the decree if granted; that if Douds is entitled to have such relief granted in the courts of Ohio then similar or like remedies may be granted to each of the several members who reside in the several states of the United States; that the granting of such relief would interfere with and destroy the contractual relations between the members of the Safety Fund Department; would impair the unity and integrity of the plan of insurance contemplated in the membership certificate and would amount to an extermination of the business of the company. The further claim was asserted that if the relief prayed for in the action was awarded, it would deprive the company of its property without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution.

The case was submitted upon a general demurrer to the answer. 76 The Supreme Court, sustaining the demurrer, denied the writ and dismissed the petition. The State ex rel. The Hartford Insurance Co. vs. Douds et al., 96 Ohio State, 60. The case not being otherwise reported, the following is a copy of the journal entry of the court:

"This case came on to be heard on the petition of the relator, the answer of the defendants, and the demurrer of the relator to such answer, and was argued by counsel. The court finds that said demurrer searches the record and raises the question of the sufficiency of the facts and allegations set forth in the said petition and the right of the relator upon such facts and allegations to have and receive the relief therein prayed for, and the court now therefore coming to consider said demurrer as a demurrer to the petition finds that the same is well taken upon the cases of *State ex rel. Nolan v. Cleary*, Denning et al., 93 Ohio St., 264; *State ex rel. Garrison v. Brown*, et al., 94 Ohio St., 115; *State ex rel. Barbee, Exr., v. Allen*, Probate Judge, ante, 10, and *State ex rel. Faber v. Jones et al.*, Judges, 95 Ohio St., 357, in that said facts and allegations of such petition are insufficient, and do not entitle the relator to the relief prayed for, and does therefore sustain such demurrer as a demurrer to said petition.

The relator not desiring to plead further herein it is ordered and adjudged that said demurrer as a demurrer to the petition be and the same is hereby sustained; that the alternative writ heretofore allowed herein be quashed, that the writ of prohibition and relief

prayed for by the relator in said petition be and the same is hereby refused and denied, and that said petition be and the same is hereby dismissed.

Writ denied."

Thereupon the defendant company filed a petition for a writ of error in the Supreme Court of the United States to reverse the judgment of the Supreme Court of Ohio in the prohibition case. *State of Ohio ex rel. Hartford Life Insurance Co. v. Douds et al.*, 245 U. S., 642. On motion of the defendant in error to affirm the judgment below, the court, on January 28, 1918, made the following order:

"Per curiam. Dismissed for want of jurisdiction upon the authority of Sec. 237, Judicial Code, as amended by act of Congress, September 6, 1916, c. 448, 39 Stat., 726; *Philadelphia and Reading Coal and Iron Company vs. Gilbert*, 245 U. S., 162."

There is pending in this court, before this referee, the parallel case of *Robert H. Langdale vs. The Hartford Life Insurance Company*, in which like relief is sought as in the instant case. After the proceedings in the Supreme Court of Ohio and the Supreme Court of the United States, in the Douds prohibition case, above stated, had been concluded, the defendant company filed a petition in prohibition in the Supreme Court of Ohio, in the Langdale case. The Common Pleas Court had overruled demurrer to the petition challenging the jurisdiction in like manner as in the Douds case. The court denied the writ. See *The State ex rel. The Hartford Life Insurance Co. vs. Langdale*, 98 Ohio St., 470, wherein, without order or further report it is stated:

"Writ denied on authority of *State ex rel. The Hartford Life Insurance Co. vs. Douds et al.*, 96 Ohio State, 604."

Thereupon the defendant company filed in the Supreme Court of the United States, a petition for a writ of certiorari to the Supreme Court of Ohio in the Langdale case. The court denied the writ. See *State of Ohio ex rel. The Hartford Life Insurance Co. vs. Robert H. Langdale*, 248 U. S., 564, wherein, without other report, it is stated:

"Petition for writ of certiorari to the Supreme Court of the State of Ohio, denied."

Conclusions of Law.

Your referee, upon the issues joined and involved, has reached certain conclusions of law, which he proceeds to state.

The Question of Jurisdiction.

The question of paramount importance in the case is the one of jurisdiction.

In the light of the proceedings in the Court of Common Pleas overruling the demurrers of the defendant company to the petition in the Supreme Court of Ohio, in denying the writ of prohibition in the Douds and Langdale cases and in the Supreme Court of the United States in dismissing the petition for a writ of error in the Douds case and in denying the petition for a writ of certiorari in the Langdale case, the referee cannot feel that the question of jurisdiction, as to him, is an open one, but on the contrary, is *res judicata*.

In the Douds prohibition case, the writ was denied apparently on the ground that the writ of prohibition will not issue to prohibit the Court of Common Pleas from determining its own jurisdiction. That this was the ground of its decision is to be inferred from the citation of authorities in the journal entry of the court, the case not being otherwise reported. The Hartford Life Insurance Company vs. Douds, 96 Ohio St., 604.

The writ of prohibition is an extraordinary legal remedy whose object is to prevent a court or tribunal, of limited or inferior powers from assuming jurisdiction of a matter beyond its cognizance. Power to issue the writ will also be exercised when it clearly appears that a court or tribunal, whose action is sought to be prohibited, has no jurisdiction of the cause or is about to exceed its jurisdiction. *State ex rel. Garrison vs. Brough*, 94 Ohio St., 115.

"The proper function of the writ of prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction and to confine them to the exercise of those powers legally conferred." *Kelly, Judge, vs. State*, 94 Ohio St., 331.

The following is a copy of the opinion of Judge Kinkead overruling the demurrers to the petition:

"The cause of action is to be regarded as one in the nature of specific performance. Plaintiff seeks to have it adjudged that the contract made by him with the company required payment of a premium of only \$2.68 per thousand after arriving at the age of sixty years. He is also asking that, if that be the meaning and intent of the contract, defendant shall be compelled to perform it accordingly—to receive the premiums stipulated and to keep in force the insurance. The claim for the amount of money paid in excess of the contract is incidental to the paramount relief sought.

Counsel for defendant contends that to grant the equitable relief sought would of necessity interfere with the operation of the safety fund department; that such mode of relief employed by the courts of this state, or by the courts of other states (such as Connecticut, the home of the defendant and the place where the contract was made, would interfere with and control the management of the business of the company and with the present and future relations of the members and plans.

It is said that it is essential to the integrity of the safety fund department plan that uniformity in the manner and method of making the assessments shall be maintained through the restriction of the Connecticut courts of jurisdiction over the assessments.

Conclusive answer may be made to the contention by the observation that the contract of insurance must have the same meaning in every state where there are policyholders. There is but one definite plan of assessment and insurance which is prescribed by the contract.

A holder of a certificate of membership issued by defendant enters into a contract with the company which agrees to assess and collect payments according to the table of graduated rates which is part of the contract. The company, and not the subscribers to other policies, makes the contract. The company, and not the holders of policies, must perform the conditions undertaken by it.

I fail to perceive the logic of counsel (for defendant) in the reference to *State ex rel. Hartford Life Insurance Company vs. Shain*, 245 Mo., 78, where it is stated that the Missouri Court held that the equitable relief there sought, being the same as here, came within the rule which forbids courts other than those of the home jurisdiction of the association from interfering with or controlling the action of the association in its relation to its members.

It would be anomalous to require a holder of a policy by one in Ohio to go to the home of the defendant in Connecticut to compel it to perform its contract according to its terms and conditions.

Compelling defendant to carry out its contract according to its terms and conditions is not an interference with the action of the company in its relation to its members."

The foregoing opinion, upholding the jurisdiction is, of course, conclusive upon the referee.

But if the question was open and the referee was called upon, under the order of reference, to report his conclusions upon it, he would feel impelled to uphold the jurisdiction.

Jurisdiction of the subject matter is always to be presumed and this is especially true in states which have constitutional provisions like our Section 15 of the Bill of Rights, which provides:

"Section 16. All courts shall be open and every person, for an injury done him in his land, goods, person or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Contracts are here involved which were entered into in Ohio by one of our citizens with a Connecticut corporation. The defendant has established a domicile of business in this state and, in assuming that domicile, subjects itself, the same as an individual or a domestic corporation, to the jurisdiction of our courts with respect to contracts made with citizens of our state. It must be taken to assent to such jurisdiction when it comes into the state to transact business. The plaintiff should not be driven to the courts of the state of Connecticut for the assertion of his rights, whatever they may be, under his contracts, unless the reasons therefor are imperative.

The action is one to compel the specific performance of the contracts in question and incidental thereto, to recover back

payments made by the plaintiff to the defendant in excess of the called for by the contracts. The defendant insists that the inquiry into the matter of payments of assessments claimed to have been levied and paid, or to be assessed in the future, in excess of those provided for in the contract would involve an interference with the internal affairs of the company, beyond the jurisdiction of any court other than that of the domicile of the defendant.

The contracts in question provided that upon the death of a member:

"An assessment shall be made upon the holders of all certificates in force in said department at the date of said death according to the table of graduated assessment rates given hereon, as determined by their respective ages and the number of such certificates in force at the date of such death."

The table of graduated assessments on each of the three certificates ran from the age of fifteen to sixty years. The specified rate at the age of sixty years was \$2.68. There was no rate specified beyond that age, nor was there anything in the contracts which gave to the company any discretionary power or authority to levy special assessments other than those provided for in the table.

The company adopted the custom of levying assessments quarterly. Assessments were levied against the plaintiff and paid by him after he had reached the age of sixty years, beyond the sum of \$2.68.

83 The method of ascertaining an assessment to be levied did not involve the exercise of discretionary powers upon the part of the officers of the defendant company. It required simple mathematical calculation. The number of outstanding certificates were ascertained. The number of deaths since the last assessment were ascertained. One divided into the other gave the mortality ratio, and that, in each instance was multiplied by the rate specified in the certificate contract, at the age attained by the holder, thus producing the amount of the assessment. It is true, that we have not, in evidence, before the court, the number of outstanding certificates nor the number of deaths, at the time each assessment was levied, but we have here in evidence the amount of each assessment levied per \$1,000 and the mortality ratios actually ascertained and used by the company at each assessment period. And we have the respective amounts paid by the plaintiff after he reached the age of sixty years together with the dates of payment. Thus, without going into the books or disturbing or interfering with the internal affairs of the company, all the factors are before the court necessary to ascertain the amounts of the assessment levied against and paid by the plaintiff in excess of the contract and to grant the relief prayed for.

The plaintiff was entitled to have the ascertained ratio multiplied by \$2.68, the amount specified in his contract after reaching the age of sixty years, instead of a larger sum. He was not bound by the calculation which compelled him to contribute at a rate beyond the

terms of his contract. The rights of other certificate holders are not involved. They are not before the court. These certificates of membership amounted to an ordinary life insurance contract, containing a definite agreement as to benefits and terms of payment of premiums with no reservation of authority upon the part of the company to vary their terms.

It seems to the referee that in cases, where the courts, having before them contracts — similar import to those here involved, and where like relief was sought, have refused to proceed, such refusal was rather a matter of expediency than want of jurisdiction. Our courts, having jurisdiction of the facts may decree the specific execution of contracts in accordance with well settled doctrines of equity jurisprudence. They must have before them the necessary evidence upon which to base a decree. If the proof is not available the party fails, but as to the power of the court to entertain the action there can be no question.

It will be noted that the action is not one to compel or enforce an assessment, or to determine the extent of the interest of the plaintiff in the Safety Fund of the defendant or the method of the distribution thereof. To grant the relief prayed for will not disturb the Safety Fund nor in anywise interfere with the internal management and operation of the defendant company. It will simply require the defendant, over which the court has jurisdiction, to live up to contracts entered into in Ohio with an Ohio citizen. Plaintiff does not sue as one of a class. Other certificates are not involved. The result here cannot affect any other certificate holder. A decree in accordance with the prayer of the petition will impose no other or different conditions or burdens upon the defendant than have already been imposed upon it by the courts of the state of its adoption.

The referee does not feel that it is incumbent upon him to review the numerous cases, many of which are quite similar in their facts to the instant case, and some of which are in direct conflict, upon the question of jurisdiction, in view of the conclusions already reached by the courts to which he is subordinate. In upholding the jurisdiction, he is content to follow in their footsteps.

Voluntary Payments.

It is contended, as matter of defense, by the defendant, that the assessments levied against the plaintiff were paid voluntarily by him, with knowledge and the means of knowledge of all the facts, and that he is therefore estopped to deny or challenge the validity or propriety thereof.

The soundness of the general proposition that a payment voluntarily made, as applied to parties acting at arm's length, cannot recover back, is well settled. But the doctrine has no application in cases where such confidential relations exist between the parties as that one is entitled to rely on the good faith of the other. It is equally well settled that payments, although voluntarily made, will

be inquired into by the courts and money received by the party owing the duty to the other party to protect his interests, will be restored to him if he has been imposed upon and injured by reason of the fiduciary relation.

86 The plaintiff had the right to rely upon the good faith of the defendant and that, in making the assessments, it would do so in accordance with the terms of his contracts. He had no means of knowing, when notice of the amount of an assessment came to his hands, whether or not it had been levied according to his specified rate because he had not the factors necessary to its computation. They were exclusively in the possession of the defendant. Relying upon the good faith of the managers of the defendant, he could only assume that the assessments were legal and proper and pay them. Such payments are not voluntary within the purview of the general doctrine relating to voluntary payments and their finality.

The referee concludes, as a matter of law, that the defendant is not estopped from demanding an accounting by the defendant for the amounts of assessments paid by him at a rate in excess of \$2.68 called for in his contract.

Statute of Limitations.

The defendant, as matter of defense, invoked the six year Statute of Limitations, and insists that if it be held that the plaintiff is entitled to recover, that in computing the amount the same should be limited to the alleged excesses in the assessments to the six years immediately preceding the commencement of the action.

The assessments levied by the defendant company were received by it in a trust capacity which continued and subsisted. Section 11236 of the General Code provides:

87 "Section 11236. The provisions of this chapter, respecting lapse of time as a bar to suit, shall not apply in the case of a continuing and subsisting trust."

The referee concludes, as a matter of law, that the Statute of Limitations does not apply to the payments in question for the reason that they were received in a trust capacity, within the contemplation of Section 11236 of the General Code, and that, therefore, the defense of the Statute of Limitations is not well taken.

Conclusion.

The referee concludes that the plaintiff is entitled to a decree, as prayed for in the petition, requiring the defendant specifically to perform the contracts in question according to their terms, by computing future assessments upon the basis of the rate of \$2.68 per \$1,000.00 of insurance, and for a judgment in favor of the plaintiff against the defendant, for assessments paid by the plaintiff in excess

of the contract rate, in the sum of \$1,857.15, with interest thereon from the first day September, 1919.

In view of the fact that the plaintiff died pending the hearing before the referee, the decree might properly be confined, in form to the rendition of judgment for the amount referred to.

Respectfully submitted,

GEO. B. OKEY,
Referee.

Supplemental Report.

On Wednesday, the 12th day of November, 1919, the referee announced his decision in this case, and delivered to counsel for the respective parties a copy of his report, and notified counsel that he would file with the clerk of the common pleas his decision and report herein on the 28th day of November, 1919.

Counsel for defendant thereupon gave notice of his intention to file herein a motion for a new trial.

Thereupon, on Friday, the 14th day of November, 1919, the defendant by its counsel filed with and submitted to the referee the following motion, to wit:

Motion of Defendant to Vacate Report of Referee and for New Trial.

1. Now comes the defendant and moves that the report of the referee herein be vacated, set aside, and held for naught, for the following reasons:

(a) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(b) That the referee under the order of reference herein was not authorized or empowered to make special findings of fact and conclusions of law, but that his authority was limited solely to taking of the testimony of the witnesses and reporting the same to the court.

2. If the for motion be overruled, the defendant moves that the report of the referee be vacated and a new trial granted, for the following causes affecting materially its substantial rights:

(a) Error in the amount of recovery in that it is too large.

(b) Errors of the referee in the admission of evidence offered by the plaintiff, to which the defendant at the time excepted.

(c) The report is not sustained by sufficient evidence.

(d) The report is contrary to law.

(e) Errors of law occurring at the trial and excepted to by the defendant.

(f) Neither the court nor the referee had any jurisdiction of this defendant.

(g) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(h) Neither the court nor the referee had any jurisdiction to grant the relief prayed for by the plaintiff herein.

(i) The findings of fact and conclusions of law of the referee constitute a regulation and control of the conduct of the internal affairs of this defendant at its domicile in the State of Connecticut, and extend the jurisdiction of the courts of this state beyond the boundaries thereof, and interfere with a subject matter which is within the exclusive jurisdiction of the courts of Connecticut, all of which is contrary to the laws and the Constitution of the State of Ohio and to the Fourteenth Amendment to the Constitution of the United States, and further, a judgment or decree for the plaintiff upon such report of the referee would deprive this defendant of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

THE HARTFORD LIFE INSURANCE
COMPANY,

By JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Its Attorneys.

90 And thereupon, on Saturday, the 15th day of November, 1919, the defendant by its counsel filed with and submitted to the referee the following objections and exceptions to his report, to wit:

Objections and Exceptions of Defendant to Report of Referee.

Now comes the defendant without prejudice to or waiving any of its rights or remedies under its motion for a new trial filed herein, and says if said motion is overruled, that in that event it objects and excepts to the findings of fact and conclusions of law of the referee herein, upon the following grounds:

1. Neither the court nor the referee had any jurisdiction of the subject matter of this action.
2. That the referee under the order of reference was not authorized or empowered to make special findings of fact and conclusions of law, but that his authority was limited solely to taking of the testimony of the witnesses and reporting the same to the court.
3. Error in the amount of recovery in that it is too large.
4. The report is not sustained by sufficient evidence.

5. The report is contrary to law.
6. Neither the court nor the referee had any jurisdiction of this action.
7. Neither the court nor the referee had any jurisdiction to grant the relief prayed for by the plaintiff herein.
8. The findings of fact and conclusions of law of the referee constitute a regulation and control of the conduct of the internal affairs of this defendant at its domicile in the State of Connecticut, and extend the jurisdiction of the courts of this state beyond the boundaries thereof, and interfere with a subject matter which is within the exclusive jurisdiction of the courts of Connecticut, all of which is contrary to the laws and the Constitution of the State of Ohio and to the Fourteenth Amendment to the Constitution of the United States, and further, a judgment or decree for the plaintiff upon such report of the referee would deprive this defendant of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

THE HARTFORD LIFE INSURANCE
COMPANY,
By JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,

Its Attorneys.

And thereupon, on Monday, the 17th day of November, 1919, said motion of the defendant for a new trial herein came on to be heard before the referee and was argued by counsel. On consideration whereof the referee overrules said motion, to which ruling and decision overruling the same the defendant by its counsel excepted.

And thereupon, on Monday, the 17th day of November, 1919, said objections and exceptions of the defendant to the report of the referee herein came on to be heard before the referee and was argued by counsel. On consideration whereof the referee overruled each and all of said objections and exceptions, to which ruling and decision overruling the same the defendant by its counsel excepted.

The defendant thereupon on this 28th day of November, 1919, presented its bill of exceptions and the same on this 28th day of November, 1919, was allowed, signed, sealed and filed with the report of the referee as a part of the record in this case, but not to be spread at large upon the journal.

In the trial of this case, the referee employed Armstrong & Okey, official stenographers, to report and transcribe the testimony and the report of the referee, and there is due them for said services the sum of \$96.85, which should be taxed and paid as part of the costs of this action.

GEO. B. OKEY,

Referee.

Dated November 28, 1919.

Motion of Defendant to Vacate Report of Referee and for New Trial

[Filed November 28, 1919.]

1. Now comes the defendant and moves that the report of the referee herein be vacated, set aside, and held for naught, for the following reasons:

(a) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(b) That the referee under the order of reference herein was not authorized or empowered to make special findings of fact and conclusions of law, but that his authority was limited solely to taking of the testimony of the witnesses and reporting the same to the court.

2. If the foregoing motion be overruled, the defendant moves that the report of the referee be vacated and a new trial granted, for the following causes affecting materially its substantial rights:

(a) Error in the amount of recovery in that it is too large.

(b) Errors of the referee in the admission of evidence offered by the plaintiff, to which the defendant at the time excepted.

(c) The report is not sustained by sufficient evidence.

(d) The report is contrary to law.

(e) Errors of law occurring at the trial and excepted to by the defendant.

(f) Neither the court nor the referee had any jurisdiction of this defendant.

(g) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(h) Neither the court nor the referee has any jurisdiction to grant the relief prayed for by the plaintiff herein.

(i) The findings of fact and conclusions of law of the referee constitute a regulation and control of the conduct of the internal affairs of this defendant at its domicile in the State of Connecticut and extends the jurisdiction of the courts of this State beyond the boundaries thereof, and interfere with a subject matter which is within the exclusive jurisdiction of the courts of Connecticut, all of which is contrary to the laws and the Constitution of the State of Ohio and to the Fourteenth Amendment to the Constitution of the United States, and further, a judgment or decree for the plaintiff upon such report of the referee would deprive this defendant

of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

THE HARTFORD LIFE INSURANCE
COMPANY,
By JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Its Attorneys.

*Motion to Confirm Report of Special Master Commissioner,
Hon. George B. Okey.*

[Filed January 9, 1920.]

Now comes the plaintiff by his counsel and the report of Hon. George B. Okey as special master commissioner in this cause, having heretofore been filed herein.

The plaintiff moves that the same be confirmed and for an order and decree thereon in conformity thereto.

SMITH W. BENNETT,
Attorney for Plaintiff.

In the Court of Appeals, Franklin County, Ohio.

[No. 778.]

ALONZO J. DOUDS, Plaintiff,

vs.

THE HARTFORD LIFE INSURANCE COMPANY, Defendant.

Transcript of Docket and Journal Entries.

- 1920, March 26.—Appeal bond filed.
- 1920, March 26.—Transcript of docket and journal entries filed.
- 1920, March 26.—Twenty-four original papers filed.
- 1920, March 26.—Bill of exceptions filed.
- 1920, September 20.—Three briefs of plaintiff in error filed.
- 1920, September 28.—Stipulation filed.
- 1920, October 5.—Three briefs for defendant in error filed.
- 1920, October 29.—Motion for new trial filed.
- 1920, November 8.—Motion for new trial re-filed.
- 1920, November 8.—Motion overruled—judgment against defendant, The Hartford Life Insurance Company for \$1857.15 with interest at 6% from September 1st 1919, as entry; exceptions. 2-156.
- 1920, November 13.—Bill of exceptions filed.
- 1920, November 13.—Notice of filing bill of exceptions filed.

1920, November 13.—I served notice on Smith W. Bennett, attorney for plaintiff by mailing to him personally a copy thereof. Guy R. Winegarner, clerk; by A. Egold, deputy.

1920, November 23.—Bill of exceptions transmitted to court.

1920, November 23.—Bill of exceptions returned by the court.

November 8, 1920.—This cause now coming on for hearing was submitted to the court upon the evidence and proof heretofore taken by the referee and incorporated with the report of such referee and filed in this cause, and upon the pleadings. On consideration whereof the court finds on the issue joined for Rebecca E. McConkey, Frank F. Doud, and Herman J. Doud, as executors of the last will and testament of Alonzo J. Doud, deceased, and that the defendant The Hartford Life Insurance Company is indebted to them in the sum of \$1857.15, with interest thereon at the rate of 6% from the first day of September, 1919.

This cause further coming on for hearing upon the motion of the defendant to set aside the findings herein, and for a new trial, the court on consideration overrules the same, to each of which findings, orders and rulings the defendant then excepted.

It is therefore considered, adjudged and decreed by the court that Rebecca E. McConkey, Frank F. Doud and Herman J. Doud, as

97 executors of the last will and testament of Alonzo J. Doud, deceased, recover from the defendant, The Hartford Life Insurance Company, the sum of \$1857.15 with interest thereon at the rate of 6% from the first day of September, 1919, and their costs herein expended, including a fee of \$250.00 heretofore allowed by the court of common pleas to the referee herein, and in all taxed at \$—, to which the defendant then excepted.

This cause further coming on for hearing on the motion of the defendant to set aside such judgment and for a new trial herein, the court on consideration thereof, overrules the same, to each of which foregoing orders, findings, rulings and judgments the defendant then excepted.

[Duly certified.]

Motion for New Trial.

[Refiled November 8, 1920.]

Now comes the defendant and moves that the decision, order and judgment of the court herein in favor of the plaintiff be vacated and set aside and that a new trial be granted herein for the following causes affecting materially the substantial rights of the defendant:

(1) That said decision, order and judgment of the court herein in favor of plaintiff and against defendant, is rendered for too large an amount.

(2) That said decision, order and judgment is not sustained by sufficient evidence and is contrary to law.

(3) That said decision, order and judgment should have been in favor of the defendant.

98 (4) That this court erred in deciding, ordering and adjudging that it has jurisdiction over the subject matter of this action.

(5) That this court erred in deciding, ordering and adjudging that the assumption of jurisdiction by it herein is not a violation of the rights of the defendant, and is not a taking of its property and a denial of due process of law, under and against the provisions of the Fourteenth Amendment to the Constitution of the United States.

(6) That this court erred in deciding, ordering and adjudging that the payments by plaintiff, sought to be recovered herein, were not voluntarily made so as to preclude recovery by him.

(7) That this court erred in deciding, ordering and adjudging that plaintiff was not barred from recovery herein by reason of the provisions of the statute of limitations.

(8) Other errors of law, apparent on the face of the record, in said decision, order and judgment, in so entering judgment in favor of plaintiff and against defendant, upon the evidence submitted in this court.

JONES, HOCKER, SULLIVAN &
ANGERT AND
ARNOLD & GAME,
Attorneys for Defendant.

99 *Bill of Exceptions.*

[Filed November 13, 1920.]

Present:

Smith W. Bennett, on behalf of Plaintiff.
Arnold & Game, on behalf of Defendant.

Be it remembered, That on the trial of the above entitled cause, at the September term, A. D. 1920, of the Court of Appeals of Franklin county, Ohio, before Hons. James I. Allread, H. L. Ferneding and Albert H. Kunkle, judges, to maintain the issues on behalf of the respective parties hereto to be maintained, the parties, plaintiff and defendant, entered into a certain stipulation in writing, which was filed herein on the 28th day of September, A. D. 1920, which said stipulation, with the caption omitted, is in the words and figures following to-wit:

Stipulation as to Submission.

It is stipulated by and between the respective parties in the above-entitled cause that the same shall be submitted herein upon the evidence and proof heretofore taken before the referee and incorporated

with the report of said referee and filed in this cause, and the pleadings and exhibits filed in this cause.

(Signed)

SMITH W. BENNETT,
Attorney for Plaintiff

(Signed)

ARNOLD & GAME,
Attorneys for Defendant.

100 And thereupon, pursuant to said stipulation all the evidence and proof heretofore taken before the referee was offered and admitted in evidence on behalf of the respective parties hereto, all objections and exceptions appearing therein being preserved to the party making the same as if originally raised and saved on this trial of this cause, which said evidence and proof hereto attached, marked Exhibit "AA" and made part hereof.

And thereupon the plaintiff rested.

And thereupon the defendant rested.

And the foregoing was all of the evidence introduced, offered and admitted on behalf of the plaintiff and on behalf of the defendant on this trial of this cause.

And thereupon, on the issues joined the court found in favor of the plaintiff ordering, adjudging and decreeing that the plaintiff Alonzo J. Douds recover of the defendant, The Hartford Life Insurance Company, the sum of \$1,857.15, together with interest thereon at the rate of six percent from the 1st day of September 1919, and his cost herein expended, including a fee of \$250.00 allowed to the said referee and in all taxed at \$—.

And thereupon the said defendant, The Hartford Life Insurance Company, to each and all of said findings, orders, judgments and decrees aforesaid in favor of said plaintiff and against said defendant at the time excepted and still excepts thereto.

And thereupon the defendant filed with the clerk of said court and submitted to said court its certain motion for a new trial, which said motion for a new trial, with the caption omitted is in the words and figures following, to-wit:

101

Motion for New Trial.

Now comes the defendant and moves that the decision, order and judgment of the court herein in favor of the plaintiff be vacated and set aside and that a new trial be granted herein for the following causes affecting materially the substantial rights of the defendant:

1. That said decision, order and judgment of the court herein, in favor of plaintiff and against defendant, is rendered for too large amount.
2. That said decision, order and judgment is not sustained by sufficient evidence and is contrary to law.
3. That said decision, order and judgment should have been in favor of the defendant.

4. That this court erred in deciding, ordering and adjudging that it has jurisdiction over the subject matter of this action.

5. That this court erred in deciding, ordering and adjudging that the assumption of jurisdiction by it herein is not a violation of the rights of the defendant, and is not a taking of its property and a denial of due process of law, under and against the provisions of the Fourteenth Amendment to the Constitution of the United States.

6. That this court erred in deciding, ordering and adjudging that the payments by plaintiff, sought to be recovered herein, were not voluntarily made so as to preclude recovery by him.

7. That this court erred in deciding, ordering and adjudging that plaintiff was not barred from recovery herein by reason of the provisions of the statute of limitations.

102 8. Other errors of law, apparent on the face of the record, in said decision, order and judgment, in so entering judgment in favor of plaintiff and against defendant, upon the evidence submitted to this court.

(Signed)

JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Attorneys for Defendant.

And thereupon, the court overruled said motion for a new trial so filed as aforesaid by said defendant to which ruling of the court in overruling said motion for a new trial the said defendant, The Hartford Life Insurance Company, at the time excepted and still excepts thereto.

And thereupon, the court entered up judgment as aforesaid in favor of said plaintiff and against said defendant in the sum of \$1,857.15 with interest from September, 1919, to which ruling of the court in entering up judgment as aforesaid in favor of said plaintiff and against said defendant, the said defendant, The Hartford Life Insurance Company at the time excepted and still excepts thereto and on the 13th day of November, A. D. 1920, filed this its bill of exceptions in said cause.

And thereupon the clerk of said court having forthwith notified the plaintiff of the filing of this bill of exceptions, and no objection or amendment to said bill of exceptions having been filed by said plaintiff said clerk on the 23rd day of November, 1920, presented to Messrs. James I. Allread, H. L. Fernalding and Albert H. Kunkle, trial judges as aforesaid, this bill of exceptions for allowance and signature by said court as provided by statute.

103 And thereupon the court received this bill of exceptions on the 23rd day of November, A. D. 1920, and said court on the 23rd day of November, 1920, A. D. certify that the foregoing was all of the evidence offered introduced and or admitted on behalf of the plaintiff and on behalf of the defendant on this trial of this cause and did allow sign and seal this bill of exceptions as provided by statute and did immediately transmit the same to the

office of the clerk of said court to be made a part of the record herein but not spread at large upon the journal, according to the statute in such case made and provided, all of which is accordingly done as of said September term, A. D. 1920, of said court.

JAMES I. ALLREAD,
H. L. FERNEDING,
ALBERT H. KUNKLE,
Judges of said Court.

*Proceedings Before Honorable George B. Okey, Referee, Beginning
Wednesday, January 22nd, 1919.*

Appearances:

Mr. Smith W. Bennett,
On behalf of the Plaintiff.
Messrs. Arnold & Game,
On behalf of the Defendant.

Be it remembered, that on the hearing of the above entitled cause before Honorable George B. Okey, referee herein, and before the introduction of any evidence herein the following proceedings were had and objections, rulings and exceptions were noted:

Morning Session,
Wednesday, January 22nd, 1919.

The Referee: You may proceed, gentlemen. The matter
104 set for hearing are the cases of Alonzo J. Doud vs. The Hartford Life Insurance Company, Number 74,362, and Robert H. Langdale vs. The Hartford Life Insurance Company, Number 72,527.

Mr. Game: I appear on behalf of the defendant under protest and object to the jurisdiction of the court over the subject matter of this action. The defendant reserves all of its rights as raised by its demurrer and amended demurrer to the petition herein, and also under its special defense in its answer, objecting to the jurisdiction of the court over the subject matter of this action.

Mr. Bennett: On behalf of the plaintiff I wish to inquire of the referee whether or not he has received from the clerk a copy of the reply filed to the answer.

The Referee: Yes, it is with the papers.

Mr. Bennett: I will be ready on behalf of the plaintiff to proceed with the case on the 29th instant.

Mr. Game: Mr. James C. Jones of St. Louis is associate counsel for the defendant in this case, and I would like to communicate with him as to the time of the hearing; otherwise the 29th would be satisfactory to local counsel.

Mr. Bennett: On the part of the plaintiff we have heretofore taken the deposition of a Mr. Frey who, I understand, is absent from the city. The presentation of the case on the part of the plaintiff

chief will be very brief. I will be ready on the 29th to make a statement of the plaintiff's case, and of my knowledge of the proceedings thus far. These particular cases are two of a series of five cases and they have heretofore been held in abeyance awaiting the decision of the Supreme Court of the United States, to which court error proceedings had been prosecuted from the judgment of the Supreme Court of Ohio in an original action of prohibition in each case of these cases. The record has been duly certified back from the Supreme Court of the United States and the order of reference has been made after the questions have again been canvassed before Judge Kinkead. I merely state this as preliminary to a full statement on a week from today, and if counsel are ready at that time,—which of course the plaintiff understands will be under protest the same as expressed here, I think we will be ready to submit our case.

The Referee: Well, the cases are set for hearing then for January 29th at 9:30 o'clock a. m.

And thereupon the further hearing of this case was adjourned until January 29th A. D. 1919 at 9:30 o'clock a. m.

Morning Session, January 29, 1919.

And thereupon, by agreement, the further hearing of this case, as adjourned to January 31st, 1919, at 2 o'clock p. m.

Afternoon Session, January 31, 1919.

And thereupon the further hearing of this case was resumed pursuant to adjournment.

Present:

Hon. George B. Okey, Referee;
Smith W. Bennett, on Behalf of the Plaintiff;
F. H. Game, on Behalf of the Defendant.

Mr. Game: If your Honor please, I would again like to state my position in regard to this matter, that the defendant appears under protest and objects to the jurisdiction of the court over the person of the defendant and the subject matter of this case for the reasons and upon the grounds set forth in the demurrer, amended demurrer to the petition herein and also as set forth in the defendant's answer.

It is remembered, That on the hearing of the above entitled cause before Hon. George B. Okey, referee, pursuant to the order of reference heretofore made herein, the plaintiff, to maintain the issues on part to be maintained, introduced and offered in testimony on behalf the following evidence, to-wit:

Mr. Bennett: Here is a deposition in the Doud case, No. 73462, which I ask the referee to open and mark as opened.

Mr. Bennett: I now offer the original certificate in the Doud case consisting of four pages and ask that it be marked as "Exhibit "A."

And thereupon the paper last above offered was marked for the purposes of identification Exhibit "A" and is hereto attached, marked, and made part hereof.

Mr. Bennett: I now offer the deposition of George D. Frey, who at the time of the taking of the deposition resided in the city of Columbus, Ohio, but since said time, as I am advised, has become non-resident. I would suggest that the deposition be not read in length but that the objections and exceptions thereto be argued in length when we come to the presentation of the case.

Mr. Game: Since the deposition is not read the defendant objects to questions and answers Nos. 7 to 72, both inclusive for the reason and upon the grounds that the same are incomplete, immaterial and irrelevant. This objection is to be noted each question and answer.

And thereupon the above deposition was marked for the purposes of identification as Exhibit "B" and is hereto attached, so marked and made part hereof.

Mr. Bennett: Your Honor, I am seeking to cover the balance of my case by stipulation and I think it will be rather brief. I intend limiting it to a waiver of, producing the company's receipts for the various assessments and to the further proposition that the payments made by plaintiff upon said certificates were paid by him to maintain the insurance in force. All the rest I conceive to be questions of law as to whether he was justified in making the payments to continue his insurance in force, and I assume that will take some time for defendant's counsel to submit the question of a stipulation to the company's counsel and if that can be obviated by a stipulation I may be able to rest plaintiff's case at the next session. Otherwise I will have to produce my ancient parties, they are both in feeble health.

The Referee: Have you evidence of formal protest at the time of making the payments?

Mr. Bennett: No, I rely upon the construction of our contract by the courts as matter of law, it having been expressly negatived by the opinions of courts of last resort to which I will call your attention later, that no power existed to change the amounts of the assessments unless by agreement of the parties. I will follow the decision of the court on that point they sought to get the various parties to acquiesce in the larger assessments and in the specific instances they refused to acquiesce therein. That is already shown by the deposition but if it is necessary further we will have the printed blanks secured from the company's office.

Mr. Game: Since the depositions have been offered in the fact that they have and the objections noted by the defendant the court necessarily can not make a ruling at this time.

The Referee: The referee reserves his decision with respect to

the objections to the depositions and exceptions may then be taken to his ruling.

And thereupon the further taking of these depositions was adjourned until Monday, February 17, 1919, at 9:30 o'clock a. m.

Morning Session, February 18, 1919.

And thereupon the further hearing of this case was resumed.

Present, same parties as at previous session.

Mr. Bennett: The plaintiff makes offer in the case of Alonzo J. Douds v. The Hartford Life Insurance Company of receipt executed by The Hartford Life Insurance Company for premium call due December 1, 1918, on his policy set forth in the petition, which receipt is hereto attached marked Plaintiff's Exhibit "B," the same being offered as a form of receipt now and at the time of the commencement of this action issued by the defendant company to its policyholders.

109 The defendant objects to the introduction of the Exhibit on the ground it is immaterial, incompetent and irrelevant.

The Referee: The referee admits the exhibit in evidence.

Mr. Game: Exception by the defendant.

And thereupon the receipt last above produced was admitted in evidence by the referee and is hereto attached marked Exhibit "BB" and made part hereof.

And thereupon the receipt was read in evidence and is in words and figures following to-wit:

Hartford Life Insurance Co., Hartford, Conn.

Nov. 1, 1918.

Alonzo J. Douds,

214 W. Tuscarawas St.,

5-38123-53841, Canton, O.:

This call which will be due December 1st, 1918, is made to meet deaths (as shown by accompanying list), benefits, \$163,500 and expenses on your policy as follows:

| | |
|--|-----------------|
| for mortality call | \$98.40 |
| for quarterly dues to March, next..... | 3.75 |
| credit | |
| Amount due | <u>\$102.15</u> |

Payment will not be accepted later than December 5, 1918, unless evidence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including December 15, 1918.

Unless the payment called for by this notice shall be paid to the company at its home office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

- 110 Return this notice with remittance payable to Hartford Life Insurance Company.

Make all remittances by draft, check, P. O. or Express Money Order when possible. Letters containing currency must be registered. (See over for special notice.)

Special Notice.

If the payment of the above quarterly call is not received at the office on or before December 5, 1918, the last day allowed for payment in the above notice, a second notice will be mailed to the policy holder by registered letter, giving until December 20, 1918, to remit and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely fifty cents.

Every member whose payment does not reach this office on or before December 5, 1918, will be obliged to pay this fifty cent fine in order to have the policy unconditionally reinstated.

After December 20, 1918, the limit allowed for payment under the registered notice, the company reserves the right to require medical examination as a condition of reinstatement.

If residence is on or west of the meridian of Salt Lake, Utah, ten days additional time is allowed.

And thereupon the further hearing of this case was adjourned until February 26, 1919, at 9:30 o'clock a. m.

Morning Session, March 27, 1919

And thereupon the further hearing of this case was resumed pursuant to adjournment.

Present: Same parties by their counsel as at previous session.

- 111 And also GEORGE D. FREY, called on behalf of the plaintiff, being first duly sworn, testified as follows:

Examined by Mr. Bennett:

Q. You are the same George D. Frey who has heretofore testified by deposition in this cause.

A. I am.

Q. You were acquainted with Mr. Doud in his life time.

A. I was.

Q. Did you call upon Mr. Doud under authority from the Hartford Life Insurance Company relative to his certificates.

A. I did.

Q. I hand you here a paper marked for the purpose of identification Exhibit "C" and you may state to the referee what that is.

A. That is a letter from the vice president, Keeney.

Q. Vice president of what company.

A. Hartford Life Insurance Company, Hartford, Connecticut.

Q. Is he living.

A. As far as I know.

Mr. Bennett: The letter marked Exhibit "C" concerning which the witness has testified is as follows:

Mr. Game: The defendant objects on the ground that the letter is incompetent.

The Referee: The objection is overruled.

(Exception by the defendant.)

Mr. Bennett (reading):

"Hartford Life Insurance Company, Hartford, Connecticut.

Raymond G. Keeney, Vice President.

September 27, 1909.

M. George D. Frey,
2106 Indianola Avenue,
Columbus, Ohio.

DEAR SIR:

In case you meet certificate holders of this company who wish some evidence of your authorization to represent the Hartford Life Insurance Company in this special work which you are doing for us, you can show them this letter, and I will state further that any certificate holder can rely upon any statement or promise made by you the same as if made by one of the officers of the company.

Very truly yours,

RAYMOND G. KEENEY,
Vice President.

Q. Under this letter of instructions state to the referee what you did in relation to Mr. Douds, the plaintiff in this action.

A. I called on Mr. Doud in regard to changing his certificate and he objected.

Q. He objected to what.

A. To signing the slip in regard to changing his rate from \$2.68 to \$4.

Q. Was the slip presented to him by you.

A. It was.

Q. I will ask you if Exhibit "A" attached to the depositions in this cause is a copy of the slip mentioned by you.

A. It is.

Q. What was the conversation that took place between you and Dr. Doud when you presented the slip referred to.

Mr. Game: The defendant objects because no time is fixed as to when the conversation took place.

Q. I will withdraw the question. Give as near as you can, Mr. Frey the time that you saw Dr. Doud and presented the slip concerning which you have testified.

A. I can not give the exact dates.

Q. Well what time relative to the date of the letter which has been marked Exhibit "C."

A. About that time, about the date of the letter.

113 Q. Now do you recall the time of the decision in the case known as the Dresser case against the Hartford Life Insurance Company decided by the Supreme Court of Connecticut.

Mr. Game: The defendant objects on the ground that it is incompetent, irrelevant and immaterial.

The Referee: The referee thinks for the purpose of ascertaining approximately the date in question the inquiry is competent and the objection is overruled.

(Exception by the defendant.)

A. I have that date. I can furnish it; I recall that.

Q. State whether it was after the decision in that case that the Hartford Life Insurance Company sent you the slips heretofore marked deposition Exhibit "A."

(Same objection by the defendant; objection overruled; exception by the defendant.)

A. It was during that trial.

Q. Had the Hartford Life Insurance Company before that time presented any slips to you or to the other agents of the company like that marked deposition Exhibit "A" for certificate holders to execute?

(Same objection by defendant; overruled; exception by defendant.)

A. No, sir.

Q. Now, Mr. Frey, state as near as you can the conversation that took place between you and Dr. Douds at the time of the presentation of deposition Exhibit "A" to him for his signature—first did he sign it?

Mr. Game: The defendant objects; the witness has already testified by way of deposition upon the point suggested by counsel's question; it is simply a repetition.

114 (Objection overruled; exception by the defendant.)

A. He did not. The substance was he objected to signing and said that he would not change his certificate. He was not aware that that there was a change in that contract, that they were compelling it; when he ascertained that they were not he refused to sign.

Q. What, if anything, did he do about protesting against the payment of the increased amount of the assessments.

(Question objected to by defendant as to form; question withdrawn.)

Q. State what he said to you, if anything, relative to the increased amount of the assessment.

A. He would pay it under protest.

Q. Now, Mr. Frey, state whether afterwards you made a report to the Hartford Life Insurance Company of the results of your visits to these various certificate or policy-holders?

A. I did, on my return to the home office.

Q. What Home office?

A. Hartford, Connecticut.

Q. Did you go to Hartford, Connecticut?

A. Made a number of trips to Hartford.

Q. To whom did you report?

A. Mr. Keeney.

Q. The vice president of the company?

A. Vice president and also the president.

Q. Who was the president?

A. George E. Keeney.

Q. Which one was known as General Keeney?

A. George E., the president.

Q. State whether you had received a verbal authority or direction from General Keeney, the president, in addition to that contained in the letter of the vice president.

115 Mr. Game: The defendant objects because it is already covered in the deposition and is repetition.

(Objection overruled; exception by defendant.)

A. I did.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by defendant.)

Q. I had not heretofore identified the two Keeneys. That is my point. State generally, Mr. Frey, whether you saw all of the certificate holders or policyholders in the Hartford Life Insurance Company then residing in Ohio relative to this same slip marked Exhibit "A."

(Question objected to by the defendant as incompetent, irrelevant and immaterial.)

A. I did.

Mr. Bennett: It is the extent of his authority. I want to show whether he executed the commission.

The Referee: The referee doubts the competency of the inquiry. Mr. Bennett: I will withdraw it, so the question and answer may be stricken from the record.

Cross-examination.

By Mr. Game:

Q. Where do you live, Mr. Frey?

A. 2320 North Fourth street, Columbus, Ohio.

Q. When did you leave the employ of the Hartford Life Insurance Company?

A. About three years ago. I was with the Hartford Life and the Missouri State Life, worked between the two.

Q. You say that you saw Mr. Douds in 1909 with reference to signing deposition Exhibit "A."

116 A. I have a record. I could give the exact date. I cannot say. To the best of my knowledge. I have the dates of the time.

Q. It was during the year 1909, 1910 or 1908.

A. How is that?

Q. Was it during the year 1909, or preceding that year or following?

A. During that and 1908 or '09 to the best of my recollection.

Q. But you are not sure whether you called on him before you received the letter from the vice president or whether it was following it?

A. It was 1909, I think, at the time I received it.

Q. When did you next see Mr. Douds?

A. I paid several visits, whenever in Canton.

Q. When was your next trip to Canton; you were there in 1909 when was your next visit?

A. 1910, I think it was.

Q. When was your next visit to Canton?

A. I could not say; I was in and out quite a number of times.

Q. How many times have you seen Dr. Douds since 1909?

A. I could not say exactly. I have seen him several times.

Q. Do you know how many assessments Dr. Douds has paid on his policy since 1909?

A. Paid four a year, assessed them quarterly.

Q. Did he ever make any payments of his assessments to you?

A. Never; all payments were made to the home office.

Q. Do you know whether or not Dr. Douds ever made any protest in paying assessments after your interview with him in 1909 when he sent his assessments to the home office?

A. He protested to me.

117 Q. When?

A. When I called on him.

Q. In 1909?

A. Nineteen hundred—I cannot say the exact date; it was after that letter.

Q. That was the only protest he ever made to you when you asked him to sign deposition Exhibit "A."

A. He refused to consent to raising that and he would pay without protest.

Q. And that was the only time that he ever said that to you, was your visit in 1909 when you presented him with Exhibit "A"?

A. I do not know but what he mentioned it each time.

Q. When did you see him next; you were there in 1909; when was your next visit to Dr. Douds?

A. 1910, 11, and along up almost to the time of his passing away.

Q. And each time you called on him did you discuss the question of the increased rate?

A. No, sir.

Q. Did you discuss it other than the time you have already testified to in 1909?

A. Yes.

Q. When?

A. Several times. I cannot give the exact date.

Q. Now, Mr. Frey, state to the court whether or not Dr. Douds when he paid his assessments to the company made any protest.

A. I cannot tell you what he did to the company or what he said to the company.

Q. You have no knowledge whether he made any protest to the company then?

A. I have not any knowledge.

Redirect examination.

By Mr. Bennett:

Q. Mr. Frey, I do not know whether I have asked you the entire length of your employment by the Hartford Life Insurance Company and the various capacities in which you represented them; will you give that?

A. I represented them in '83.

Q. 1883?

A. Yes, when these contracts were issued.

Q. Go on and state the various capacities.

A. I was with them, I guess, between six and seven years.

Q. What capacity?

A. As general agent for Ohio, southern Ohio; and then I left and went east, went back to Wisconsin—from the east went to Wisconsin. And when I returned to Ohio General Keeney sent for me in regard to these certificates and he wanted me to see these policyholders and see what I could do in regard to having them sign that slip. I was with him about seven years on that, I think.

Q. Then the total length of your employment, the total time was how long?

A. Altogether about 15 years.

Q. Now, Mr. Frey, state whether Dr. Douds had any knowledge of any change in the certificate or policies held by him prior to the time that you presented the slip marked deposition Exhibit "A" to him for his signature.

(Question objected to by the defendant as incompetent; objection overruled; exception by the defendant.)

A. He did not.

Q. Do you know, Mr. Frey, whether or not you were the first person to communicate to Dr. Douds that the terms of his policy had changed?

(Question objected to by the defendant as to form; objection overruled; exception by defendant.)

A. I was the first.

119 Q. Give the facts, if you have the knowledge, Mr. Frey, as to the separation by the Hartford Life Insurance Company of its old line business from its mutual business.

(Question objected to by defendant as incompetent and immaterial; objection overruled; exception by the defendant.)

A. The old line business was absorbed by the Missouri State Life. They were consolidated rather when Mr. Hoyt bought out General Keeney's interest, John G. Hoyt.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by the defendant.)

Q. What became of the mutual business; in what city was it transacted?

(Question objected to by the defendant; objection overruled; exception by the defendant.)

A. Hartford, Connecticut.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by the defendant.)

Q. Where were the headquarters for the old line business?

(Question objected to by the defendant; objection overruled; exception by the defendant.)

A. St. Louis, Missouri.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by the defendant.)

120 And thereupon the further hearing of this cause was adjourned until Thursday, April 4, 1919, at nine-thirty o'clock a. m.

Morning Session, April 4, 1919.

And thereupon the further hearing of this cause was adjourned until April 10, 1919, at nine-thirty o'clock a. m.

Morning Session, April 10, 1919.

And thereupon the further hearing of this cause was adjourned until Thursday, April 24, 1919, at nine-thirty o'clock a. m.

Morning Session, April 24, 1919.

And thereupon the further hearing of this cause was adjourned until Thursday, May 1, 1919, at nine-thirty o'clock a. m.

Morning Session, May 1, 1919.

And thereupon the further hearing of this cause was resumed pursuant to adjournment.

Present: Same parties as at previous sessions.

Mr. Bennett: In lieu of the original certificate marked Exhibit A, plaintiff offers in evidence a copy thereof attached to the petition, and admitted by the defendant to be a true copy thereof, together with all exhibits attached thereto.

And thereupon the certificate above referred to is admitted in evidence on behalf of the defendant, and is hereto attached by copy, marked Exhibit A, and made a part hereof.

And thereupon the plaintiff rested.

Mr. Game: The defendant now moves that upon the evidence already offered that judgment may be entered in its favor as prayed for in its answer.

121 (Motion overruled; exception by the defendant.)

And thereupon the defendant rested.

Mr. Game: Defendant now renews its motion for a judgment in its favor upon the evidence already offered, and moves that plaintiff's petition be dismissed.

(Motion overruled; exceptions by the defendant.)

And the foregoing was all the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of the defendant on this trial of this cause.

Monday Morning Session, October 6, 1919.

And thereupon the further hearing of this matter was resumed.

Present: Same parties by their respective counsel as at previous sessions.

Mr. Bennett: Let the record show that the former entry showing that the plaintiff rests be set aside for the introduction of further testimony, and George D. Frey, who has heretofore been called and testified on behalf of the plaintiff is recalled.

Mr. Game: To all of which the defendant objects and excepts.

GEORGE D. FREY, recalled as a witness on behalf of the plaintiff, testified as follows:

Examined by Mr. Bennett:

Q. Mr. Frey, you have heretofore testified orally in this case, haven't you?

A. I have.

Q. Also by deposition?

A. Yes, sir.

Q. And in your deposition have you set forth the computation of the amounts overpaid by the plaintiff on his contract?

A. I have.

122 Q. State whether at the time that you made the computation attached to your deposition you had and were you familiar with the rule of the company in making such computation?

A. Yes, I had.

Q. Have you in your possession a report of the examination of the Safety Fund Department of the defendant company made by the insurance department of the state of Connecticut in 1906?

A. I have.

Q. Does such report contain a table showing the difference in the rates prior to 1885?

A. It does.

Q. Does it show the change of rates from 1885 to 1894?

A. It does.

Q. Does it show an entire new change of rates?

A. It does.

Q. After what year?

A. After 1884.

Q. 1894, you mean?

A. Yes, 1894.

For the purpose of identification I will have this marked Plaintiff's Exhibit D.

And thereupon the pamphlet marked "Report of an Examination of the Safety Fund Department of the Hartford Life Insurance Company by the Insurance Department of the State of Connecticut," was marked for the purposes of identification as Plaintiff's Exhibit D.

Q. Were you at the time of receiving this an agent of the defendant company?

A. At the time that was received?

Q. Yes.

A. No, I had served before and after.

Q. How long after this?

A. Very soon after that was received.

Q. The date?

A. That was received in 1906.

123 Q. The dates of your service in connection with the company have heretofore been given in your evidence, have they not?

A. I think they have. I am quite sure they have.

Q. You have heretofore given the conversations which you have

had with the officers of the company concerning the change of rates, have you not?

A. I think so. As I recollect, I have.

Q. So as to advise the referee, if it has not heretofore been done, as to your method of making these computations, will you explain it by taking any one of the mortality calls?

A. I think I have the rule given by the secretary some place.

Q. Well, I am now asking about your method of computation. I hand you assessment number 111 on the policy of Mr. Langdale as typical of the others.

Mr. Bennett: Now, is that what the referee wanted to have brought out.

The Referee: More particularly the referee wanted whatever evidence the witness might have as to the mortality ratio actually used by the company.

Mr. Bennett: Yes.

The Referee: In his former testimony he gave it down to a certain point, but not down to the time of the death of the plaintiff Doud. The referee wanted any additional testimony, if he has it, as to the mortality ratios actually used by the company.

Mr. Bennett: Then my former question may be stricken out.

Q. In view of the request of the referee, I would ask if you have in the pamphlet referred to or otherwise the ratios used in the computation of the calls by the defendant company?

A. I have in this report.

Q. Just state the page of the report.

A. Pages 24 to 26.

Q. Down to what number of call is that extended?

A. Call 113.

Q. To what date?

A. To November 1, 1906.

Q. Have you any further publication sent out by the company showing the ratios in addition to this shown on pages 24 to 26 to the exhibit referred to?

A. I have a slip here issued by Secretary Lawrence, showing an additional call from 114 to 123, inclusive.

Q. Now, at the time you made the computation set forth in the exhibit attached to your deposition, did you follow the rule contained in these exhibits?

A. I did.

Q. I hand you a paper which for purposes of identification is marked Plaintiff's Exhibit E, and ask you what that is and where you received it?

And thereupon the card headed, "The amount of each call in the Safety Fund Department is determined as follows," was marked for purposes of identification as Plaintiff's Exhibit E.

A. That is a copy sent out by Secretary Bacall in 1906.

Q. Did you resort to that in making the computation?

A. Yes, sir.

Mr. Bennett: I now offer in evidence the exhibit referred to "Report of the examination of the Safety Fund Department" of the defendant company by the insurance department of the state

Connecticut in the following particulars:

125 The first nine pages thereof.

That portion thereof which is contained on pages 14 to 1 inclusive, under the heading, "The Safety Fund," on page 14 and ending on page 17 with the subject "Administration of the Safety Fund Trust."

Also pages 24, 25 and 26, headed "Table D," on page 24, "List ratios," and ending with the words, "Women's divisions," on page 2

Mr. Game: To the introduction of those parts of the exhibit just referred to by the plaintiff, the defendant objects upon the ground that they are incompetent, immaterial and irrelevant.

And thereupon the referee overruled the above objection of the defendant, to which ruling of the referee the defendant excepted.

And thereupon the portions of the exhibit above referred to were offered, introduced and admitted in evidence on behalf of the plaintiff, subject to the objection and exception of the defendant, and as in the words and figures following, to wit:

Report of Examination.

State of Connecticut.

Office of the Insurance Commissioner.

Hartford, November 8, 1906.

An examination of the condition and affairs of the Safety Fund Department of the Hartford Life Insurance Company, under the authority conferred by Sections 3490 and 3531 of the General Statutes, was begun by this department in June of this year. The complete results are submitted herewith.

126 The objects of this examination were (1) to consider briefly the corporate history of the company and its legal powers and duties in relation to its assessment business; (2) to describe and analyze the various kinds of Safety Fund or assessment policies in force and ascertain whether the terms of these contracts had been rigorously complied with; (3) to investigate the mortality experienced by the company on its assessment policies; (4) to investigate the history of the administration of the Safety Fund by the trustee thereof since its beginning in 1880; (5) to verify the financial statement of the Safety Fund Department made to the insurance commissioner for the year ended December 31, 1905; and (6) to consider generally such of the methods of business pursued in the company's Safety Fund Department as might seem advisable.

For the fourth purpose above mentioned, the Security Company, as trustee of the Safety Fund, placed its books and records at the command of the department examiners. All ledger entries pertaining

ing to the Safety Fund, for the twenty-five years since its beginning, were abstracted and summarized.

In making this examination the department has had the assistance and advice of Mr. Clayton C. Hall, of Baltimore, Maryland, an actuary of over thirty-five years' experience in the active practice of his profession. Mr. Hall's report follows on page 3.

On page 28 will be found a supplementary report summarizing the results of an examination of the company's books and vouchers by a clerical force from this department.

This examination did not include the stock department of the company, which is doing a legal reserve business exclusively.

THERON UPSON,
Insurance Commissioner.

127 *Report of Clayton C. Hall, Consulting Actuary.*

Baltimore, Md., October 29, 1906.

Hon. Theron Upson,
Insurance Commissioner,
Hartford, Conn.

SIR:

In compliance with your request I have taken part in the examination of the Safety Fund Department of the Hartford Life Insurance Company begun in June last, under your direction, by the examiners of your office, and recently completed.

The financial condition of this department of the company's business, together with the statement of receipts and disbursements for the year 1905, are fully shown in the statements which have been prepared for that purpose.

I respectfully submit the following report upon the subjects which were particularly referred to me for consideration. In order that a clear view of the subject may be presented, it is necessary to review briefly the corporate history of the company, the terms of the trust agreement under which the Safety Fund was established; the manner in which the fund has been administered, and the conditions contained in the policies or certificates of membership issued by the company to persons insured in the Safety Fund Department.

Corporate History.

The company was originally created under the name of the Hartford Accident Insurance Company, by resolution of the assembly at its session in 1866. Its charter was subsequently amended by resolutions adopted at sessions of 1867, 1868, 1879, 1882, 1897 and 1903, enlarging the powers of the corporation and changing its title successively to "Hartford Life and Accident Insurance Company," "Hartford Life and Annuity Insurance Company," and finally to "The Hartford Life Insurance Company," the

name by which the corporation is now known and under which its business is conducted.

The only enactment amendatory to the charter of the company which it is necessary here to cite is Section 6 of the amendment approved May 22, 1867, which was amended by resolution approved April 25, 1882, to read as follows:

"Section 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks of whatever description other than mere accident risks and other than such contracts as it has made or may make wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts, said amount to be computed upon an assumption of mortality of the rates, known as the actuaries' or combined experience rates, and at a rate of interest of four per cent per annum; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accident, and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof; provided, that the capital stock of the company shall be liable for all its contracts, without exemption by reason of anything therein contained."

129

The Safety Fund System.

The theory of the Safety Fund System, which is unlike the plan upon which the business of all the other life insurance companies in Connecticut is conducted and in fact unlike that of any insurance company now in existence, can best be stated by quoting from the official publication of the company by which it was introduced.

In a "Manual" or "Agents' Hand Book" issued by the Hartford Life and Annuity Company, and bearing the date 1893, the following words appear on page 13:

"In 1880 it (the company) adopted its popular and well known Safety Fund System of Insurance, which has been and is now so popular.

"The Safety Fund System of life insurance differs essentially from any other plan operated, either by company or association. It is a plan of pure insurance, avoiding the accumulation of a reserve fund beyond the point of necessity for absolute security to the policyholders, the only investment feature being that of the single payment of \$10 for each \$1,000 of insurance, made but once, to form the Safety Fund, which is held in trust for a specific emergency, and for the sole benefit of the policyholders."

Trust Agreement.

For the purpose of carrying into effect this Safety Fund System, an agreement was entered into between the Insurance Company and

the Security Company of (Hartford, Connecticut), by which the latter became the trustee of the fund.

130 The essential features of the trust agreement, which is dated December 31, 1879, are contained in the following paragraphs which are quoted therefrom:

"Whereas, the party of the first part purposes to issue to persons contracting therefor, certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words, to-wit:

"That said company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said fund, by applying the same to the payment of their future dues and assessments; and that, whenever said fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said company in like manner as the interest.

131 "Said company further agrees that if at any time, after said fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership or shall neglect, if justly and legally due, to pay the maximum indemnity provided for by the terms of any certificate issued in said department, and such certificate shall be presented for payment to said trustee by the legal holder thereof, accompanied by satisfactory evidence, as herein-after provided, or its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said fund) among all the holders of certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their certificates shall bear to the amount of the whole number of such certificates in force; and that in such event it shall file with said trustee a correct list, under oath, of the names; residences, and amounts of the certificates of all members entitled to participate in such division. The evidence referred to above to be either certifica-

tion by said insurance company's president or secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period sixty days from its date."

132 Among the obligations assumed by the Security Company trustee, are the following:

"That, as often as the sums composing such fund shall be amount sufficient to purchase one thousand dollars, par value, United States bonds, said trustee shall make investment of such funds therein and register the same in its name as trustee of the Safety Fund of the said insurance company, and provided no default by the party of the first part as hereinbefore recited shall occur shall accumulate said fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1891 or until such time thereafter as said fund shall amount to the hundred thousand dollars, par value, of the bonds purchased by said fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements; and, until such default shall occur, will thereafter add to the principal of said fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole fund shall amount in such bonds, at their par value, to one million dollars. And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said fund into money and divide the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their share shall have been obtained. Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper division thereof agreed with its certificate holders."

"It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with its certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and rendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said insurance company, and the balance of said fund, if any, shall be paid over to the party of the first part."

In 1889 an act was passed by the General Assembly in relation to the investments of this fund as follows:

"Resolved by this Assembly: That the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the Safety Funds, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies, dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company, in such other securities, in addition to United States bond, as the life insurance companies of this state are authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided, such investments of said funds in other securities than United States bonds shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that nothing in this resolution shall be so construed as in any way to vary, alter, or change the purposes, conditions, or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested."

Policy Contracts.

The policies issued in the Safety Fund Department differ widely in form.

The old "certificates of membership," in use in 1880 and afterwards, contained a provision as follows:

"An assessment for as many dollars as there shall be similar certificates in force in said department at the date of such death shall be made upon the holders thereof according to the table of graduated assessment rates, given hereon, as determined by their respective ages when assessed, and the sum collected thereon — shall be paid to —. Provided, however, that in no case shall the payment upon their certificate in the event of such death exceed one thousand dollars."

Beneath the "Table of Graduated Assessment Rates" given on the back of the certificate is printed the following:

"These rates will decrease as the certificates in force increase above one thousand in number."

It is said by the present officers of the company that these statements were based upon an hypothesis that a separate assessment should be levied for each death.

From about 1885 to 1894 it seems to have been provided in all policies that the assessments paid should form a mortuary fund, and that the "indemnity" should be payable from that fund only. Under contracts so worded the liability of the company is evidently limited

by the sufficiency of the mortuary fund, so formed, and extends further.

In the forms of policy contract, adopted in 1894, and all in since that year, the amount of the indemnity has been expressed as a definite sum and a direct liability of the company. The liability of the policyholder to pay such mortality contributions as may be levied in the manner prescribed in the policy, is distinctly expressed, but it is nowhere stated that the liability of the company is limited by the results of such levies or assessments or the sufficiency of a mortuary fund. No such fund is mentioned.

Change of Rates.

Upon most of the forms of policy issued in the Safety Fund department, but not all, there is printed a "table of rates" by which assessments for the mortality fund or for mortuary claims, are to be levied according to the attained age of the policyholder. In the year 1894, it having been recognized that the rates previously in force did not fairly represent the distribution of mortality actually experienced by the company at the several ages of life, a new table of rates was adopted as the basis of assessment for policies issued from and after the date of its adoption.

The old rates and those adopted in 1894 are as follows.

| Ages. | Old rate. | New rate. |
|-------------|-----------|-----------|
| 15-21 | \$0.65 | \$0.75 |
| 22 | .69 | .75 |
| 23 | .71 | .75 |
| 24 | .73 | .75 |
| 25 | .75 | .75 |
| 26 | .77 | .80 |
| 27 | .79 | .80 |
| 28 | .81 | .80 |
| 29 | .83 | .80 |
| 30 | .85 | .80 |
| 31 | .88 | .80 |
| 32 | .91 | .80 |
| 33 | .94 | .80 |
| 34 | .97 | .80 |
| 35 | 1.00 | .90 |
| 36 | 1.03 | .90 |
| 37 | 1.06 | .90 |
| 38 | 1.09 | 1.00 |
| 39 | 1.12 | 1.00 |
| 40 | 1.14 | 1.00 |
| 41 | 1.16 | 1.00 |
| 42 | 1.18 | 1.10 |
| 43 | 1.20 | 1.10 |
| 44 | | |
| 137 | | |
| 45 | 1.22 | 1.20 |
| 46 | 1.25 | 1.20 |

| Ages. | Old rate. | New rate. |
|-------|-----------|-----------|
| 47 | 1.30 | 1.35 |
| 48 | 1.35 | 1.43 |
| 49 | 1.40 | 1.51 |
| 50 | 1.47 | 1.59 |
| 51 | 1.54 | 1.69 |
| 52 | 1.63 | 1.79 |
| 53 | 1.72 | 1.91 |
| 54 | 1.81 | 2.03 |
| 55 | 1.92 | 2.17 |
| 56 | 2.03 | 2.31 |
| 57 | 2.15 | 2.47 |
| 58 | 2.32 | 2.64 |
| 59 | 2.50 | 3.03 |
| 60 | 2.68 | 3.47 |
| 61 | 2.86 | 3.94 |
| 62 | 3.08 | 4.43 |
| 63 | 3.30 | 4.96 |
| 64 | 3.65 | 5.56 |
| 65 | 4.00 | 6.24 |

It is to be observed that the changes made, in this effort to adjust the rates more nearly to actual experience, were quite radical. From ages 15 to 31 the new rates are higher than the old; from ages 32 to 45 they are lower; while from age 46 and over the new rates are not only higher than the old, but the increase from year to year is rapid, until for age 65 and over the new rate of assessment is \$6.24 as compared with \$4.00 under the old, or an advance of more than 50 per cent upon the "rating" under the latter.

188 The method of assessment under these policies is expressed in the conditions printed thereon as follows:
 "On the first day of March, June, September and December in every calendar year, after date hereof, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund) such mortality contributions as shall be levied and called hereon upon the rating of this policy in Column 1 of the table of mortality rates printed hereon at the then respective age of the member, according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met," etc.

This language would seem to require that the "ratio" so-called should be applied to a uniform "rating" for all members of the same department; but as the ratio is in fact applied to the "rating" printed on the policy it is evident that the actual contributions levied upon persons holding policies issued in 1894 and subsequent years differ materially from the assessments upon persons of the same age holding policies of earlier issues. But any readjustment of the method

of levying the assessments so as to make them uniform, even if desirable, would apparently be inconsistent with the terms of the contracts, and impracticable.

The terms "rate," "ratings," and "ratios" have been used in different senses in different policy forms issued by the company; but the meaning now attached to the several terms, and the manner in which the amounts of assessments are determined are explained by the company in a circular of which the following is a copy:

"The amount of each call in the Safety Fund Department is determined as follows:

By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as published on the back of the certificate at the attained age of each member whose certificate is in force, is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with advancing age each year up to age 65. Beyond that age the increase is caused wholly by an increase of the ratio."

The Safety Fund.

This fund was created, as the quotations from the agreement with the trustee and the conditions contained in the policies show, by contributions from the policyholders of \$10 for each \$1,000 of insurance.

In the annual already quoted it is stated (page 13) that the fund is held in trust "for the sole benefit of the policyholders."

And again on page 15, that

"* * * it is provided in the system and its contracts that should the amount of insurance fall below one million the trustees of the fund shall, upon proper notification, divide the fund among the remaining policyholders, changing the whole life policies to matured endowments, to meet the full face value of which the fund would be ample."

No such agreement is to be found either in the trust agreement or the policy contracts.

It is provided, however, that in the event of the refusal or failure of the company,

"* * * to pay the maximum indemnity provided for by the terms of any certificate issued in said department and such certificate shall be presented for payment to said trustee by the legal holder thereof * * * it shall be the duty of said trustee to at once convert said Safety Fund into money and divide the same (less reasonable charges and expenses for the management and control of said fund), among all the holders of certificates then in force in said department."

The evidence required of default having been committed by the company is either a certificate from its president or secretary that a claim is justly and legally due and that payment has been demanded and refused (which would be practically equivalent to a confession of insolvency) or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction.

In the conditions printed on the policies it is stated that " * * * this policy or certificate of membership issued in a special department known as the Safety Fund Department and participates in all the benefits of the trustee's contract which is printed hereon and referred to and made a part hereof with the same effect as if recited in full in this condition. And if any final distribution of said 141 Safety Fund shall be ordered as provided for therein, said distribution shall be in lieu of payment hereunder and all liability of the company shall cease in respect of this contract."

The amount of the Safety Fund (Men's Division) is about \$1,000,000. The amount of insurance outstanding in the department is reported to be about \$40,000,000, so that if a distribution of the fund were ordered and made there would be a dividend of about \$25.00 upon each \$1,000.00 of insurance, and the holders of matured claims would in this event be treated precisely like the holders of running policies.

If the liability of the company upon these policies is in fact limited to the amount of the Safety Fund, and the obtaining of a judgment would result in the distribution of the fund, giving the holder in effect merely a right to receive his distributive share in the Safety Fund, then a judgment of \$1,000 would at this time be satisfied by the payment of \$25 and the business of the department would be terminated and its policies canceled. But it has already been pointed out that while policies which are to be paid out of a particular "Mortuary Fund" only, are obviously limited by the sufficiency of that fund, the greater number of the policies issued in the Safety Fund Department contain no such limitation.

The amendment to the company's charter, made April 25, 1882, requires the maintenance of a regular reserve upon all life policies other than mere accident risks, and contracts on which the sum payable "is made contingent upon an assessment collected." And 42 it further provides "that the capital stock of the company shall be liable for all its contracts without exemption by reason of anything herein contained."

The policies issued in the Safety Fund Department do provide for assessments regulated according to the attained age and therefore, according to the theory of assessment insurance, the value of the future unpaid premiums would at all times be equal to and fully offset the due of the insurance outstanding. But the payment of the indemnity is not made contingent upon the collection of any assessment, except in those cases where they are payable out of a "Mortuary Fund" only. Otherwise they are unqualified obligations of the company. These contracts are to be distinguished from those of the Massachusetts Safety Fund Association (147 Mass., 363, 367) where

the obligation assumed was not to pay an indemnity, but to levy an assessment for the purpose.

The sum of ten dollars for each one thousand dollars of insurance required to be paid for the creation of the Safety Fund was in no sense an assessment. It was a stipulated sum in consideration of which the policyholders became entitled to, as recited in the policies "participation in all benefits of the trustee's contract."

These benefits consist, so far as the policyholders are concerned, in a distributive share in the interest of the invested fund, and after the sum of \$1,000,000 had been obtained, in the distribution of the contributions which the new members might make toward its creation. As the company ceased issuing policies upon the assessment plan in 1899 no new contributions (except some deferred installments on old policies) come in, and the interest revenue is about \$40,000 or 4 per cent upon the principal yearly, admitting of a dividend of about \$1.00 on each \$1,000 of insurance.

It is distinctly provided in the trust agreement that after all certificates issued in the Safety Fund Department "have been legally settled and surrendered to it or properly canceled * * * the balance of said fund, if any, shall be paid over to the * * * Company. That is to say, according to the letter of the trust agreement embodied in the policy contracts, the policyholders have no interest in or title to the corpus of the fund except in the event of its distribution as already described. Otherwise, it inures wholly to the stockholders.

As to the causes which led to the discontinuance by the company in 1899 of issuing new policies in the Safety Fund Department, it is claimed by the company that on account of the general distrust of the assessment plan which had arisen, and consequent restrictive legislation, its further conduct had become impossible. At a hearing before the insurance committee of the legislature in April, 1906, it was stated by the counsel for the company, that "they stopped because legislation in the different states was hostile."

At the same hearing the president of the company said:

"Regardless of the facts, the gentlemen say the company could go on. I say they could not * * * All we could get were practically people who worked in shops among whom the mortality was very much higher. It meant the mortality would have gone so high it would have wrecked us."

144 In a circular issued to certificate holders under date of March 22, 1906, and bearing the signatures of both Hon. George E. Keeney, the president, and Mr. Charles H. Bacall, the secretary, it is stated as follows:

"The company was forced to discontinue the issue of Safety Fund certificates because of the revulsion of public sentiment against assessment insurance, and the consequent hostile legislation."

TABLE D.

List of Ratios in the Calls of the Safety Fund Department of the Hartford Life Insurance Company, Beginning June 10, 1880, This Assessment Being Designated as No. 4.

The first three assessments were made in the Mutual Benefit Association. In every case the ratio given is that levied upon the great body of the members. In every assessment up to the discontinuance of the issue of Safety Fund Certificates this ratio was modified in the case of those members who had not been in the company a full year.

Men's Division.

| Call No. | Ratio. | Date issued. |
|----------|--------|---------------------|
| 4..... | \$0.81 | June 10, 1880. |
| 5..... | 1.12 | September 6, 1880. |
| 6..... | 1.34 | November 20, 1880. |
| 7..... | 1.15 | February 1, 1881. |
| 8..... | 1.81 | March 29, 1880. |
| 9..... | 1.50 | June 3, 1881. |
| 10..... | 1.45 | September 20, 1881. |
| 11..... | 1.60 | November 5, 1881. |
| 12..... | 1.60 | January 11, 1882. |
| 13..... | | |
| 14..... | 1.70 | March 20, 1882. |
| 15..... | 1.65 | June 17, 1882. |
| 16..... | 1.36 | September 7, 1882. |
| 17..... | 1.22 | November 27, 1882. |
| 18..... | 1.70 | February 10, 1883. |
| 19..... | 1.65 | April 25, 1883. |
| 20..... | 1.55 | July 17, 1883. |
| 21..... | 1.36 | September 29, 1883. |
| 22..... | 1.23 | November 27, 1883. |
| 23..... | 1.65 | February 1, 1884. |
| 24..... | 1.55 | May 1, 1884. |
| 25..... | 1.40 | August 1, 1884. |
| 26..... | 1.65 | November 1, 1884. |
| 27..... | 1.65 | February 1, 1885. |
| 28..... | 1.72 | May 1, 1885. |
| 29..... | 2.05 | August 1, 1885. |
| 30..... | 2.03 | November 1, 1885. |
| 31..... | 2.05 | February 1, 1886. |
| 32..... | 2.03 | May 1, 1886. |
| 33..... | 2.15 | August 1, 1886. |
| 34..... | 2.10 | November 1, 1886. |
| 35..... | 2.10 | February 1, 1887. |
| 36..... | 2.10 | May 1, 1887. |

| Call No. | Ratio. | Date issued. |
|----------|--------|-------------------|
| 36..... | 2.10 | August 1, 1887. |
| 37..... | 2.10 | November 1, 1887. |
| 38..... | 2.10 | February 1, 1888. |
| 39..... | 2.10 | May 1, 1888. |
| 40..... | 2.10 | August 1, 1888. |
| 41..... | 2.10 | November 1, 1888. |
| 42..... | 2.10 | February 1, 1889. |
| 146 | | |
| 43..... | 2.10 | May 1, 1889. |
| 44..... | 2.10 | August 1, 1889. |
| 45..... | 2.10 | November 1, 1889. |
| 46..... | 2.10 | February 1, 1890. |
| 47..... | 2.10 | May 1, 1890. |
| 48..... | 2.10 | August 2, 1890. |
| 49..... | 2.52 | November 1, 1890. |
| 50..... | 2.40 | February 1, 1891. |
| 51..... | 2.25 | May 1, 1891. |
| 52..... | 2.25 | August 1, 1891. |
| 53..... | 2.20 | November 1, 1891. |
| 54..... | 2.20 | February 1, 1892. |
| 55..... | 2.20 | May 1, 1892. |
| 56..... | 2.20 | August 1, 1892. |
| 57..... | 3.30 | November 1, 1892. |
| 58..... | 2.20 | February 1, 1893. |
| 59..... | 2.20 | May 1, 1893. |
| 60..... | 2.20 | August 2, 1893. |
| 61..... | 2.20 | November 1, 1893. |
| 62..... | 2.25 | February 1, 1894. |
| 63..... | 2.25 | May 1, 1894. |
| 64..... | 2.25 | August 1, 1894. |
| 65..... | 2.25 | November 1, 1894. |
| 66..... | 2.25 | February 1, 1895. |
| 67..... | 2.61 | May 1, 1895. |
| 68..... | 2.40 | August 1, 1895. |
| 69..... | 2.40 | November 1, 1895. |
| 70..... | 2.40 | February 1, 1896. |
| 71..... | 2.40 | May 1, 1896. |
| 72..... | 2.40 | August 1, 1896. |
| 147 | | |
| 73..... | 2.40 | November 1, 1896. |
| 74..... | 2.40 | February 1, 1897. |
| 75..... | 2.40 | May 1, 1897. |
| 76..... | 2.40 | August 1, 1897. |
| 77..... | 2.40 | November 1, 1897. |
| 78..... | 2.50 | January 30, 1898. |
| 79..... | 3.00 | May 2, 1898. |
| 80..... | 3.00 | August 2, 1898. |

| Call No. | Ratio. | Date issued. |
|----------|--------|-------------------|
| 81..... | 3.00 | November 1, 1898. |
| 82..... | 3.00 | February 1, 1899. |
| 83..... | 3.00 | May 1, 1899. |
| 84..... | 3.00 | August 2, 1899. |
| 85..... | 3.00 | November 1, 1899. |
| 86..... | 3.00 | January 30, 1900. |
| 87..... | 3.00 | May 2, 1900. |
| 88..... | 3.25 | August 2, 1900. |
| 89..... | 3.25 | November 1, 1900. |
| 90..... | 3.25 | January 30, 1901. |
| 91..... | 3.25 | May 2, 1900. |
| 92..... | 3.60 | August 2, 1901. |
| 93..... | 3.35 | November 1, 1901. |
| 94..... | 3.80 | January 30, 1902. |
| 95..... | 3.80 | May 2, 1902. |
| 96..... | 3.75 | August 2, 1902. |
| 97..... | 3.25 | November 1, 1902. |
| 98..... | 3.25 | February 1, 1903. |
| 99..... | 3.25 | May 2, 1903. |
| 100..... | 3.25 | August 2, 1903. |
| 101..... | 3.80 | November 1, 1903. |
| 102..... | 3.30 | February 1, 1904. |
| 103..... | | |
| 104..... | 3.80 | May 2, 1904. |
| 105..... | 3.80 | August 2, 1904. |
| 106..... | 3.60 | November 1, 1904. |
| 107..... | 3.60 | February 1, 1905. |
| 108..... | 3.80 | May 2, 1905. |
| 109..... | 3.60 | August 2, 1905. |
| 110..... | 3.80 | November 1, 1905. |
| 111..... | 3.80 | February 1, 1906. |
| 112..... | 3.50 | May 1, 1906. |
| 113..... | 3.75 | August 1, 1906. |
| 114..... | 3.20 | November 1, 1906. |

Mr. Bennett: Plaintiff next offers the continuation of the calls and ratios as shown by plaintiff's Exhibit E, being from call 113 to 123, inclusive.

Mr. Game: To the introduction of which the defendant objects upon the grounds that it is incompetent, irrelevant and immaterial.

And thereupon the referee overruled the above objection of the defendant, to which ruling of the referee the defendant excepted.

And thereupon the portion of the exhibit above offered was introduced and admitted in evidence on behalf of the plaintiff, subject to the objection and exception of the defendant, and is in the words and figures following, to wit:

"The amount of each call in the Safety Fund Department is determined as follows:

By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as illustrated in the table of graduated assessment rates on the back of the certificate, at 149 the attained age of each member whose certificate is in force is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with advancing age each year up to the age of 65. Beyond that age the rate for the age does not increase, and any variation in the assessment is due to a variation in mortality.

T. F. LAWRENCE, *Secretary*.

| Call No. | Date. | Ratio. |
|----------|-----------------|--------|
| 113. | Nov., 1906..... | \$3.20 |
| 114. | Feb., 1907..... | 3.50 |
| 115. | May, 1907..... | 3.55 |
| 116. | Aug., 1907..... | 3.20 |
| 117. | Nov., 1907..... | 3.00 |
| 118. | Feb., 1908..... | 3.20 |
| 119. | May, 1908..... | 3.80 |
| 120. | Aug., 1908..... | 3.60 |
| 121. | Nov., 1908..... | 3.30 |
| 122. | Feb., 1909..... | 3.80 |
| 123. | May, 1909..... | 3.80 |

Mr. Bennett: Now, I have not got that down to the date of the last assessment in the Doud case, that is, by any of the exhibits sent out by the company, but I have covered that by the witness having pursued the same method of computation with kindred ratios 150 arrived at by the same rule in making the computations that have been brought down to the date of the last assessment in the Doud case, and to the date of the last assessment preceding the bringing of the suit in the Langdale case.

Mr. Bennett: I now desire to offer in evidence plaintiff's Exhibit F, heretofore identified by the witness Frey, in the language following:

You can always satisfy yourself that you are assessed in accordance with your policy contract. If you will bear in mind that the rate at age 60 is \$2.68, dividing this rate into the amount of your assessment will give you the ratio or number of times the rate. The ratio in the current call is 3 50/100. Multiplying this by \$2.68 we have \$9.38 as the assessment on \$1,000.00; \$93.80 the assessment on \$10,000.00."

Which, as made applicable to the amounts of the policies in the cases at bar, would be \$3,000.00 each.

Q. Now, Mr. Frey, in asking you a question a while ago as to whether you followed a certain rule, I will ask you again, having heard this rule read into the record by counsel for plaintiff, to state to the referee whether you followed that in making the——

A. That is the only rule I had from the company.

Q. In making the computation attached to your deposition as Exhibit B?

A. That is the only one I had to follow.

Q. And you did follow it?

A. Yes.

Mr. Bennett: I will ask him one more question.

Q. Will you be able to take the same rule and add to deposition Exhibit B, being your computations the amounts of the additional calls down to the last one paid by Doctor Doud prior to his death and the last one paid by Mr. Langdale prior to the commencement of this action?

A. Applied to all of them.

The Referee: I do not think he understood the question yet.

Q. The question is, in the Doud case your computation only extended to call 152, being made in September, 1916?

A. In the Doud case 161.

Q. This is the Doud case—152. Can you make the additional computation under similar rule under which you have computed this of the additional calls down to the last call paid by Doctor Doud?

A. Yes, sir.

Q. For that purpose will it be necessary for you to have the calls before you?

A. No. It will be necessary to have the calls before me in computing the ratio—that is, the quarterly call issued by the company.

The Referee: I suppose he meant yes.

Mr. Bennett: I will undertake to get you the additional calls so that these computations may be made, if accepted by the referee.

Q. Now, in the exhibit attached to your deposition in the Langdale case, you have made computations of the amounts down to quarterly call 142, being in the month of March, 1914. I will ask you whether you can extend the computations under similar rule down to the last call prior to the commencement of this action?

A. I can.

Q. Referring to the Langdale action. I will request you, therefore, to consider yourself under oath and make the computations required and hand them to the referee.

A. Yes.

Mr. Bennett: Do you want to object?

Mr. Game: No, I think not. You are usurping the function of the referee probably.

The Referee: The referee assumes that the witness has no in-

formation in the form of data from the company showing the ratios that were actually used after call 123, May, 1909, but that the ratios which he proposes to furnish after that date are matters of computation.

Mr. Game: Just a minute. If that is the understanding, then the defendant objects, because there is no evidence what the ratios are. I assumed you had the ratios here and were going to make the computation.

Q. Adopting the inquiry of the referee heretofore made, I will ask you if you can make the computations showing the ratios under the rule adopted by the company, so as to show to the referee the ratio as well as the amount?

A. I can show the ratio to the amount of that quarterly call. I can show you the figures—the way the company got at it, by taking the number of deaths, the amount of insurance in force, what it would be necessary to call on these members to make up this quarterly call, and then multiplying this ratio by the rate would give you the amount necessary, collecting the amount of the quarterly call. That gives you the ratio for the mortality, only the dues are fixed and that leaves that out.

Q. It leaves out of account the amount of the dues?

A. Yes.

Q. I will ask you then for that purpose, is it necessary to have anything else *that* the quarterly calls that have been given to these members?

A. That is all, to strike the ratio that the company used.

153 The Referee: From that you can compute the number of deaths?

The Witness: No, you cannot, but they show the number of deaths on their call list.

Mr. Bennett: On each quarterly call. Will you have that read, "On each quarterly call?"

The Witness: Each quarterly call.

Mr. Bennett: Now, I wanted to give to the counsel and to the referee my idea before, why I did not introduce these separate calls. They would be cumbersome. But I did show that he used the calls to make the computations, and now we have reiterated that, but should you insist that each call go in, of course, that would be cumbersome. But here is the result of it and the method arrived at.

The Referee: In order that the case may be entirely before the referee, it seems to me that the calls subsequent to number 123 should be in evidence.

The Referee: Let the record show that it is stipulated that the witness may use the calls without their being formally introduced in evidence.

Mr. Game: He may make a tabular record of the calls, without offering the calls themselves.

The Referee: Subsequent to call number 123.

The Witness: On some but not all of these we have the call, not all, but it will apply because they are all the same age.

Mr. Bennett: Let the results of his computations be handed to the referee.

154 Mr. Game: I have no objection to handing them to the referee, but I could not, of course, accept his computations. I have no objection to his tabular work, but I do not think his computations should be made a part of the record.

Mr. Bennett: I understand the proposition to be that Mr. Frey will be permitted to make a chronological arrangement in tabular form of the calls in the same form as it has heretofore been made, attached as exhibits to his depositions, and that they shall be extended down to the respective dates heretofore referred to, namely, in the Doud case, to the date of the last call paid by Doctor Doud, the plaintiff, and in the Langdale case according to the date set forth in the petition.

No cross-examination.

And thereupon the plaintiff rested.

Mr. Game: The defendant now renews its motion for a judgment in its favor upon the evidence already offered, and moves that the plaintiff's petition be dismissed.

And thereupon the referee overruled the above motion of the defendant, to which ruling of the referee the defendant excepted.

And thereupon the defendant rested.

And thereupon the defendant renewed its motion for a judgment in its favor upon the evidence already offered, and to dismiss the plaintiff's petition; motion overruled, exception by the defendant.

And the foregoing is all of the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of the defendant in this trial of the cause.

55

"EXHIBIT A."

Certificate of Membership.

Benefit Not to Exceed \$1,000.

No. —, Safety Fund Department. Age 45.

The

Hartford Life and Annuity Ins. Co.

of

Hartford, Connecticut,

in consideration of the representations, agreements and warranties made in the application heretofore, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, to create a Safety Fund, as hereinafter described, and of Three Dollars per

annum, for expenses, to be paid as hereinafter conditioned and of further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Alonzo J. Douds, with the following agreements:

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed, five years prior to the date of any such division their stipulated proportion of said Fund, by applying

156 the same to the payment of their future dues and assessments;

and that, whenever said Fund shall amount to One Million Dollars all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be

either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment

157 thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that so long as any Certificate of Membership in the Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said

member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required, together with any balance due said Company)—to his estate, otherwise to his legal representatives within ninety days after the receipt of such proofs, upon presentation and surrender
 158 of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

1. Application Made Part of Contract.—The application on the faith of which this Certificate issues is hereby referred to and made
 part of this contract.

2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for expenses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by monthly or other pro rata installments of the same in advance for periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assessment in accordance with the Table of Graduated Assessment Rates, as printed hereon, within thirty days from day on which notice bears date. And further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement with the Trustees aforesaid, a copy of which is printed hereon and hereby made a part of this contract: all such payments to be made
 159 direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission: And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if

either the monthly dues, assessments, or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustee of the Safety Fund; and that if a legal and just claim to benefit under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, or before January 1, 1885, and the sum collected on the assessment to be made in such event shall be paid over, as hereinbefore stipulated; or such claim shall arise after said Fund shall have accumulated to said amount, or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

160 4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, or delivered by an agent of the Company shall be deemed a legal and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary showing such facts, shall be taken and accepted as conclusive evidence of the mailing of such notice, and of the facts aforesaid, as set forth in such transcript.

5. Change of Residence of Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining under ground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delirium tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, misrepresentation, or false statement or statement not

true made in the application of which this Certificate issues; or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. And that in case any Country, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company in account of any moneys collected hereon, said member agrees to pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to hold this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said

Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

11. Powers of Agents.—Agents of the Company cannot alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive money or assessments, dues, or Safety Fund deposits maturing and payable after the issue of this Certificate.

In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 2nd day of May, one thousand eight hundred and eighty-three.

(Signed)

[SEAL.]

T. R. FOSTER,

President.

(Signed) W. A. COWLES,

Ass. Secretary.

(Agents of the Company are not authorized to make any indorsements on this certificate.)

Trustee's Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and

164 Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words: to wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual distribution of the net interest received therefrom by it pro rata among all the holders of Certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount

"to one million dollars all subsequent receipts therefor shall
 165 "be distributed by the said Company in like manner as the"
 "interest."

"Said Company further agrees that if at any time, after said
 "Fund shall have amounted to three hundred thousand dollars,"
 "or after five years from January 1, 1880, if that amount shall not"
 "have been attained before that date, it shall fail by reason of in-"
 "sufficient membership, or, shall neglect if *and* legally due, to pay"
 "the maximum indemnity provided for by the terms of any"
 "Certificates issued in said department, and such Certificate shall be"
 "presented for payment to said Trustee by the legal holder thereof,"
 "accompanied by satisfactory evidence, as hereinafter provided, of"
 "its failure to pay, after demand upon it within the time herein"
 "stipulated for limitation of action, then it shall be the duty of said"
 "Trustee to at once convert said Safety Fund into money and dis-"
 "tribute the same (less the reasonable charges and expenses for the"
 "management and control of said Fund) among all the holders of"
 "Certificates then in force in said department, or their legal"
 "representatives in the proportion which the amount of each of"
 "their Certificates shall bear to the amount of the whole number"
 "of such Certificates in force; and that in such event it shall file"
 "with said Trustee a correct list, under oath, of the names, residences"
 "and amounts of the Certificates of all members entitled to"
 "participate in such division. The evidence referred to above to be"
 "either certification by said Insurance Company's President or"
 166 "Secretary that a claim is justly and legally due and that"
 "payment thereof has been demanded and refused, or the"
 "duly attested copy of a final judgment obtained thereupon"
 "in any court of competent jurisdiction, satisfaction of which has"
 "been neglected or refused for a period of sixty days from this date."
 "And said Company further agrees that so long as any Certificate"
 "of membership in its Safety Fund Department shall remain in"
 "force, said Fund shall be in no wise chargeable or liable for any"
 "use or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of
 the covenants and agreements hereinafter contained on the part of
 the party of the second part and in accordance with its agreement
 with its Certificate holders, as hereinbefore recited, does hereby
 appoint the party of the second part Trustee as aforesaid and
 covenants and agrees with it and its successors in said trust to deposit
 with said Trustee, as soon as received, the sum of ten dollars on
 each thousand dollars of the amount of each and every Certificate of
 membership issued by it in the aforesaid department until said
 Fund shall amount to one million dollars, to be by said Trustee held
 in trust and accumulated as hereinafter agreed, and the income
 thereof, less the reasonable compensation and expense of said trust,
 be paid over to the party of the first part, as hereinafter provided,
 to be used by the party of the first part in accordance with the herein-
 before recited agreements: And when said Trustee shall pay the in-
 come, as above, to the party of the first part, or, shall make any
 other payments from said Fund, as required by the terms

hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors in consideration of such deposits and of a reasonable compensation for its services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the
 168 Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements. And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper distribution thereof as agreed with its Certificate holders.

All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of
 169 the party of the first part; and all payments required herein

to be made to the Certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

170 And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In Witness Whereof, the party of the first part has affixed hereto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,

By E. H. CROSBY,
President, and

STEPHEN BALL,
Secretary.

SECURITY COMPANY,

By ROBERT E. DAY,
President, and

WILLIAM L. MATSON,
Treasurer.

[SEAL.]

171 *Table of Graduated Assessment Rates for Death Losses for Every \$1,000 of a Total Indemnity of \$1,000,000.*

| Age. | Rate. | Age. | Rate. | Age. | Rate. |
|--------------|--------|--------|--------|--------|--------|
| 15 to 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.35 |
| 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| 23.... | .69 | 37.... | 1.03 | 50.... | 1.47 |
| 24.... | .71 | 38.... | 1.06 | 51.... | 1.54 |
| 25.... | .73 | 39.... | 1.09 | 52.... | 1.63 |
| 26.... | .75 | 40.... | 1.12 | 53.... | 1.72 |
| 27.... | .77 | 41.... | 1.14 | 54.... | 1.81 |
| 28.... | .79 | 42.... | 1.16 | 55.... | 1.92 |
| 29.... | .81 | 43.... | 1.18 | 56.... | 2.03 |
| 30.... | .83 | 44.... | 1.20 | 57.... | 2.15 |
| 31.... | .85 | 45.... | 1.22 | 58.... | 2.32 |
| 32.... | .88 | 46.... | 1.25 | 59.... | 2.50 |
| 33.... | .91 | 47.... | 1.30 | 60.... | 2.68 |
| 34.... | .94 | | | | |

These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting.

Received of The Hartford Life and Annuity Insurance Company, of Hartford, Conn., —, in full for all claims under this Certificate No. —, on the life of — —, deceased.

— —, Beneficiary.
— —, Beneficiary.

Witness:

— —.

(Back of Policy.)

This Company has no agents authorized to receive money on Assessments, Dues, or Safety Fund.

172

No. 34501.

Safety Fund Department.

Certificate of Membership.

Benefit Not to Exceed \$1,000.

Issued by The

Hartford Life and Annuity Insurance Co.,

Hartford, Conn.

Name, Alonzo J. Douds.

Agent, — —.

Read carefully all the conditions of this certificate.

No person should be a party to a contract without knowing all its conditions.

After an Agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

Always give number of this certificate in writing to home office.

E. J. Thomas, Gen'l Agent.

Know All Men by These Presents, That the undersigned beneficiary— named in the within Certificate, issued to ——— in consideration of — have sold, assigned and conveyed to ———, of ———, County of ———, State of ———, and to h— heirs and assigns forever, all — right, title, and interest in the within Certificate of Membership, subject to the terms and conditions thereof.

I hereby constitute the said assignee or assignees its attorney, in my name, but to h— own use, to take all legal measures which
173 may be proper to keep in force said Certificate and finally collect all amounts due and to become due thereunder, with power of substitution.

Witness my hand and seal this — day of ———, 18—.

————. [SEAL.]

If more than one beneficiary, they can sign below.

EXHIBIT "BB."

Hartford Life Insurance Co., Hartford, Conn.

Nov. 1, '18.

Alonzo J. Douds,
214 W. Tuscarawas St.,
Canton, O.:

5-38123-53841.

This call which will be due Dec. 1st, 1918, is made to meet 71 deaths [as shown by accompanying list], benefits, \$163,500 and expenses on your policy as follows:

| | |
|---------------------------------------|----------|
| For mortality call..... | \$98.40 |
| For quarterly dues to Mch., next..... | 3.75 |
| Credit | \$..... |
| Amount due | \$102.15 |

Payment will not be accepted later than December 5, 1918, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including December 15, 1918.

Unless the payment called for by this notice shall be paid to the company at its home office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to Hartford Life Insurance Company.

Make all remittances by draft, check, P. O. or express money order when possible. Letters containing currency must be registered.

See over for special notice.

Special notice of quarterly call No. 161.

Your next quarterly call will fall due and be payable March 1, 1919.

174

PLAINTIFF'S EXHIBIT "D."

Report of Examination.

State of Connecticut.

Office of the Insurance Commissioner.

Hartford, November 8, 1906.

An examination of the condition and affairs of the Safety Fund Department of the Hartford Life Insurance Company, under the authority conferred by Sections 3490 and 3531 of the General Statutes, was begun by this department in June of this year. The completed results are submitted herewith.

The objects of this examination were (1) to consider briefly the corporate history of the company and its legal powers and duties in relation to its assessment business; (2) to describe and analyze the various kinds of Safety Fund or assessment policies in force and ascertain whether the terms of these contracts had been rigorously complied with; (3) to investigate the mortality experienced by the company on its assessment policies; (4) to investigate the history of the administration of the Safety Fund by the trustee thereof since its beginning in 1880; (5) to verify the financial statement of the Safety Fund Department made to the insurance commissioner for the year ended December 31, 1905; and (6) to consider generally such of the methods of business pursued in the company's Safety Fund Department as might seem advisable.

For the fourth purpose above mentioned, the Security Company, as trustee of the Safety Fund, placed its books and records at the command of the department examiners. All ledger entries pertaining to the Safety Fund, for the twenty-five years since its beginning, were abstracted and summarized.

In making this examination the department has had the assistance and advice of Mr. Clayton C. Hall, of Baltimore, Maryland, an actuary of over thirty-five years' experience in the active practice of his profession. Mr. Hall's report follows on page 3.

On page 28 will be found a supplementary report summarizing the results of an examination of the company's books and vouchers by a clerical force from this department.

This examination did not include the stock department of the company, which is doing a legal reserve business exclusively.

THERON UPSON,
Insurance Commissioner.

Report of Clayton C. Hall, Consulting Actuary.

Baltimore, Md., October 29, 1906.

Hon. Theron Upson,
Insurance Commissioner,
Hartford, Conn.

SIR:

In compliance with your request I have taken part in the examination of the Safety Fund Department of the Hartford Life Insurance Company begun in June last, under your direction, by the examiners of your office, and recently completed.

The financial condition of this department of the company's business, together with the statement of receipts and disbursements for the year 1905, are fully shown in the statements which have been prepared for that purpose.

176 I respectfully submit the following report upon the subjects which were particularly referred to me for consideration. In order that a clear view of the subject may be presented, it is necessary to review briefly the corporate history of the company, the terms of the Trust Agreement under which the Safety Fund was established; the manner in which the fund has been administered, and the conditions contained in the policies or certificates of membership issued by the company to persons insured in the Safety Fund Department.

Corporate History.

The company was originally created under the name of the Hartford Accident Insurance Company, by resolution of the assembly at its session in 1866. Its charter was subsequently amended by resolutions adopted at sessions of 1867, 1868, 1879, 1882, 1897 and 1903, enlarging the powers of the corporation, and changing its title successively to "Hartford Life and Accident Insurance Company," "Hartford Life and Annuity Insurance Company," and finally to "The Hartford Life Insurance Company," the name by which the corporation is now known and under which its business is conducted.

The only enactment amendatory to the charter of the company which it is necessary here to cite is section 6 of the amendment approved May 22, 1867, which was amended by resolution approved April 25, 1882, to read as follows:

"Section 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life risks of whatever description other than mere accident
177 risks, and other than such contracts as it has made or may make wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts, said amount to be computed upon an assumption of mortality at the rates known as the actuaries' or combined experience rates, and at a rate of in-

terest of 4 per cent per annum; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accidents, and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof; provided, that the capital stock of the company shall be liable for all its contracts without exemption by reason of anything therein contained."

The Safety Fund System.

The theory of the Safety Fund System, which is unlike the plan upon which the business of all other life insurance companies in Connecticut is conducted, and in fact unlike that of any insurance company now in existence, can best be stated by quoting from the official publication of the company by which it was introduced.

In a "Manual" or "Agents' Hand Book" issued by the Hartford Life and Annuity Company, and bearing the date 1893, the following words appear on page 13:

"In 1880 it [the company] adopted its popular and well known Safety Fund System of insurance, which has been and is now so popular."

178 "The Safety Fund System of life insurance differs essentially from any other plan operated, either by company or association. It is a plan of pure insurance, avoiding the accumulation of a reserve fund beyond the point of necessity for absolute security to the policyholders, the only investment feature being that of the single payment of \$10.00 for each \$1,000 of insurance, made but once, to form the Safety Fund, which is held in trust for a specific emergency, and for the sole benefit of the policyholders."

Trust Agreement.

For the purpose of carrying into effect this Safety Fund System, an agreement was entered into between the insurance company and the security company (of Hartford, Connecticut) by which the latter became the trustee of the fund.

The essential features of the trust agreement, which is dated December 31, 1879, are contained in the following paragraphs which are quoted therefrom:

"Whereas, The party of the first part purposes to issue to persons contracting therefor, certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words, to wit:

"That said Company will deposit said sum of ten dollars, when received, with the trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of certificates in force in said department at such times, who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars, all subsequent receipts therefor shall be divided by the said company in like manner as the interest.

"Said company further agrees that if at any time, after said fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any certificate issued in said department, and such certificate shall be presented for payment to said trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for liquidation of action, then it shall be the duty of said trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their certificates shall bear to the amount of the whole number of such certificates in force; and that in such event it shall file with said trustee a correct list, under oath, of the names, residences, and amounts of the certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's president or secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from its date."

Among the obligations assumed by said Security Company, trustee, are the following:

"That, as often as the sums composing such fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States bonds, said trustee shall make investments of such funds therein and register the same in its name as trustee of the Safety Fund of the said Insurance Company, and, provided no de-

fault by the party of the first part as hereinbefore recited shall occur, shall accumulate said fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1

1879, or until such time thereafter as said fund shall amount to three hundred thousand dollars, par value, of the bonds purchased for said fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements; and, unless such default shall occur, will thereafter add to the principal of said fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole fund shall amount in such bonds, at their par value, to one million dollars; and in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said fund into money and divide the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained; said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper division thereof as agreed with its certificate holders."

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with its certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and
 182 surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said fund, if any, shall be paid over to the party of the first part."

In 1889 an act was passed by the General Assembly in relation to the investments of this fund as follows:

"Resolved by this Assembly: That the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the Safety Fund, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies, dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders of certificates of membership in said Hartford Life and Annuity Insurance Company in such other securities, in addition to United States bonds, as the life insurance companies of this state are authorized to invest in, instead of being compelled to invest all said

funds in United States bonds as specified in said contract; provided, such investments of said funds in other securities than United States bonds shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that nothing in this resolution shall be so construed as in any way to vary, alter or change the purposes, conditions, or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested."

183

Policy Contracts.

The policies issued in the Safety Fund Department differ widely in form.

The old "certificates of membership," in use in 1880 and afterwards, contained a provision as follows:

"An assessment for as many dollars as there shall be similar certificates in force in said department at the date of such death shall be made upon the holders thereof according to the table of graduated assessment rates, given hereon, as determined by their respective ages when assessed, and the sum collected thereon * * * shall be paid to ——. * * * Provided, however, that in no case shall the payment upon this certificate in the event of such death exceed one thousand dollars."

Beneath the "Table of Graduated Assessment Rates" given on the back of the certificate is printed the following:

"These rates will decrease as the certificates in force increase above one thousand in number."

It is said by the present officers of the company that these statements were based upon an hypothesis that a separate assessment would be levied for each death.

From about 1885 to 1894 it seems to have been provided in all policies that the assessments paid should form a Mortuary Fund, and that the "indemnity" should be payable from that fund only. Under contracts so worded the liability of the company is evidently limited by the sufficiency of the Mortuary Fund, so formed, and extends no further.

184 In the forms of policy contract adopted in 1894, and all in use since that year, the amount of the indemnity has been expressed as a definite sum and a direct liability of the company. The liability of the policyholder to pay such mortality contributions as may be levied in the manner prescribed in the policy, is distinctly expressed, but it is nowhere stated that the liability of the company is limited by the results of such levies or assessments or the sufficiency of any mortuary fund. No such fund is mentioned.

Change of Rates.

Upon most of the forms of policy issued in the Safety Fund Department, but not all, there is printed a "table of rates" by which

assessments for the mortuary fund, or for mortuary claims, are to be levied according to the attained age of the policyholder. In the year 1894, it having been recognized that the rates previously in force did not fairly represent the distribution of mortality actually experienced by the company at the several ages of life, a new table of rates was adopted as the basis of assessment for all policies issued from and after the date of its adoption.

The old rates and those adopted in 1894 are as follows:

| Ages. | Old rate. | New rate. |
|-------------|-----------|-----------|
| 15-21 | \$.65 | \$.74 |
| 23 | .69 | .76 |
| 24 | .71 | .77 |
| 25 | .73 | .78 |
| 26 | .75 | .79 |
| 27 | .77 | .80 |
| 28 | .79 | .81 |
| 185 | | |
| 29 | .81 | .83 |
| 30 | .83 | .84 |
| 31 | .85 | .86 |
| 32 | .88 | .87 |
| 33 | .91 | .89 |
| 34 | .94 | .91 |
| 35 | .97 | .93 |
| 36 | 1.00 | .95 |
| 37 | 1.03 | .97 |
| 38 | 1.06 | .99 |
| 39 | 1.09 | 1.01 |
| 40 | 1.12 | 1.04 |
| 41 | 1.14 | 1.06 |
| 42 | 1.16 | 1.09 |
| 43 | 1.18 | 1.13 |
| 44 | 1.20 | 1.17 |
| 45 | 1.22 | 1.22 |
| 46 | 1.25 | 1.28 |
| 47 | 1.30 | 1.35 |
| 48 | 1.35 | 1.43 |
| 49 | 1.40 | 1.51 |
| 50 | 1.47 | 1.59 |
| 51 | 1.54 | 1.69 |
| 52 | 1.63 | 1.79 |
| 53 | 1.72 | 1.91 |
| 54 | 1.81 | 2.03 |
| 55 | 1.92 | 2.17 |
| 56 | 2.03 | 2.31 |
| 57 | 2.15 | 2.47 |
| 58 | 2.32 | 2.64 |

186

| Ages. | Old rate. | New rate. |
|-------|-----------|-----------|
| 59 | 2.50 | 3.03 |
| 60 | 2.68 | 3.47 |
| 61 | 2.86 | 3.94 |
| 62 | 3.08 | 4.43 |
| 63 | 3.30 | 4.96 |
| 64 | 3.65 | 5.56 |
| 65 | 4.00 | 6.24 |

It is to be observed that the changes made, in this effort to adjust the rates more nearly to actual experience, were quite radical. From ages 15 to 31 the new rates are higher than the old; from ages 32 to 45 they are lower; while from age 46 and over the new rates are not only higher than the old, but the increase from year to year is rapid, until for age 65 and over the new rate of assessment is \$6.24 as compared with \$4.00 under the old, or an advance of more than 50 per cent upon the "rating" under the latter.

The method of assessment under these policies is expressed in the conditions printed thereon as follows:

"On the first day of March, June, September and December in every calendar year, after date hereof, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund) such mortality contributions as shall be levied and called hereon upon the rating of this policy in column 1 of the table of mortality rates printed hereon at the then respective age of the member, according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met," etc.

This language would seem to require that the "ratio" so called should be applied to a uniform "rating" for all members of the same department; but as the ratio is in fact applied to the "rating" printed on the policy it is evident that the actual contributions levied upon persons holding policies issued in 1894 and subsequent years differ materially from the assessments upon persons of the same age holding policies of earlier issues. But any readjustment of the method of levying the assessments so as to make them uniform, even if desirable, would apparently be inconsistent with the terms of the contracts and impracticable.

The terms "rates," "ratings" and "ratios" have been used in different senses in different policy forms issued by the company; but the meaning now attached to the several terms, and the manner in which the amounts of assessments are determined, are explained by the company in a circular of which the following is a copy:

"The amount of each call in the Safety Fund Department is determined as follows:

"By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as published on the back of the certificate at the attained age of each member whose certificate is in force, is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with advancing age each year up to age 65. Beyond that age the increase is caused wholly by an increase of the ratio."

The Safety Fund.

This fund was created, as the quotations from the agreement with the trustee and the conditions contained in the policies show, by contributions from the policyholders of \$10.00 for each \$1,000 of insurance.

In the Manual already quoted it is stated (page 13) that the fund is held in trust "for the sole benefit of the policyholders."

And again on page 15, that

" * * * it is provided in the system and its contracts that should the amount of insurance fall below one million the trustee of the fund shall, upon proper notification, divide the fund among the remaining policyholders, changing the whole life policies to matured endowments, to meet the full face value of which the fund would be ample."

No such agreement is to be found either in the trust agreement or the policy-contracts.

It is provided, however, that in the event of the refusal or failure of the company

" * * * to pay the maximum indemnity provided for by the terms of any certificate issued in said department, and such certificate shall be presented for payment to said trustee by the legal holder thereof, * * * it shall be the duty of said trustee to at once convert said Safety Fund into money and divide the same (less reasonable charges and expenses for the management and control of said fund), among all the holders of certificates then in force in said department."

The evidence required of default having been committed by the company is either a certificate from its president or secretary that claim is justly and legally due and that payment has been demanded and refused (which would be practically equivalent to a confession of insolvency) or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction.

In the conditions printed on the policies it is stated that

" * * * this policy or certificate of membership is issued in a special department known as the Safety Fund Department and participates in all the benefits of the Trustee's Contract which is printed hereon and referred to and made a part hereof with the same effect as if recited in full in this condition. And if any final distribution of said Safety Fund shall be ordered as provided for therein, said distribution shall be in lieu of payment hereunder and all liability of the company shall cease in respect of this contract."

The amount of the Safety Fund (Men's Division) is about \$1,000,000.00. The amount of insurance outstanding in the department is reported to be about \$40,000,000.00, so that if a distribution of the fund were ordered and made there would be a dividend of about \$25.00 upon each \$1,000.00 of insurance, and the holders of matured claims would in this event be treated precisely like the holders of running policies.

If the liability of the company upon these policies is in fact limited to the amount of the Safety Fund, and the obtaining of a judgment would result in the distribution of the fund, giving the holder in effect merely a right to receive his distributive share in the Safety Fund, then a judgment of \$1,000.00 would at this time be satisfied by the payment of \$25.00 and the business of the department would be terminated and its policies canceled. But it has already been pointed out that while policies which are to be paid out of a particular "Mortuary Fund" only, are obviously limited by the sufficiency of that fund, the greater number of the policies issued in the Safety Fund Department contain no such limitation.

The amendment to the company's charter, made April 25, 1882, requires the maintenance of a regular reserve upon all life policies other than mere accident risks, and contracts on which the sum payable "is made contingent upon an assessment collected." And it further provides "that the capital stock of the company shall be liable for all its contracts without exemption by reason of anything herein contained."

The policies issued in the Safety Fund Department do provide for assessments regulated according to the attained age and therefore, according to the theory of assessment insurance, the value of the future unpaid premiums would at all times be equal to and fully offset the value of the insurance outstanding. But the payment of the indemnity is not made contingent upon the collection of any assessment, except in those cases where they are payable out of a "Mortuary Fund" only. Otherwise they are unqualified obligations of the company. These contracts are to be distinguished from those of the Massachusetts Safety Fund Association (147 Mass., 363, 367) where the obligation assumed was not to pay an indemnity, but to levy an assessment for the purpose.

The sum of ten dollars for each one thousand dollars of insurance required to be paid for the creation of the Safety Fund was in no wise an assessment. It was a stipulated sum in consideration of which the policyholders became entitled to, as recited in the policies, participation in all benefits of the Trustee's Contract."

These benefits consist, so far as the policyholders are concerned, in a distributive share in the interest on the invested fund, and after the sum of \$1,000,000.00 had been obtained, in the distribution of the contributions which the new members might make toward its creation. As the company ceased issuing policies upon the assessment plan in 1899 no new contributions (except some deferred installments on old policies) come in, and the interest revenue is about \$40,000.00 or 4 per cent. upon the principal yearly, admitting of a dividend of about \$1.00 on each \$1,000.00 of insurance.

It is distinctly provided in the Trust Agreement that after all certificates issued in the Safety Fund Department "have been legally settled and surrendered to it or properly canceled * * * the balance of said fund, if any, shall be paid over to the * * * company. That is to say, according to the letter of the Trust Agreement embodied in the policy contracts, the policyholders have no interest in or title to the corpus of the fund except in the event of its distribution as already described. Otherwise it inures wholly to the stockholders.

As to the causes which led to the discontinuance by the company in 1899 of issuing new policies in the Safety Fund Department, it is claimed by the company that on account of the general distrust of the assessment plan which had arisen and consequent restrictive legislation its further conduct had become impossible. At a hearing before the insurance committee of the legislature in April, 1905, it was stated by the counsel for the company, that "they stopped because legislation in the different states was hostile."

At the same hearing the president of the company said: "Regardless of the facts, the gentlemen say the company could go on. I say they could not * * * All we could get were practically people who worked in shops, among whom the mortality is very much higher. It meant the mortality would have gone so high it would have wrecked us."

In a circular letter issued to certificate holders under date of May 22, 1906, and bearing the signatures of both Hon. George E. Keene, the president, and Mr. Charles H. Bacall, the secretary, it is stated as follows:

"The company was forced to discontinue the issue of Safety Fund Certificates because of the revulsion of public sentiment against assessment insurance, and the consequent hostile legislation."

193

TABLE D.

List of Ratios in the Calls of the Safety Fund Department of the Hartford Life Insurance Company, Beginning June 10, 1880. This Assessment Being Designated as No. 4.

The first three assessments were made in the Mutual Benefit Association. In every case the ratio given is that levied upon the great body of the members. In every assessment up to the discontinuance of the issue of Safety Fund Certificates this ratio was modified in the case of those members who had not been in the company a full year.

Men's Division.

| Call No. | Ratio. | Date issued. |
|----------|--------|---------------------|
| 4..... | \$0.81 | June 10, 1880. |
| 5..... | 1.12 | September 6, 1880. |
| 6..... | 1.34 | November 20, 1880. |
| 7..... | 1.15 | February 1, 1881. |
| 8..... | 1.81 | March 29, 1880. |
| 9..... | 1.50 | June 3, 1881. |
| 10..... | 1.45 | September 20, 1881. |
| 11..... | 1.60 | November 5, 1881. |
| 12..... | 1.60 | January 11, 1882. |
| 13..... | 1.70 | March 20, 1882. |
| 14..... | 1.65 | June 17, 1882. |
| 15..... | 1.36 | September 7, 1882. |
| 16..... | 1.22 | November 27, 1882. |
| 17..... | 1.70 | February 10, 1883. |
| 18..... | 1.65 | April 25, 1883. |
| 19..... | 1.55 | July 17, 1883. |
| 20..... | 1.36 | September 29, 1883. |
| 194 | | |
| 21..... | 1.23 | November 27, 1883. |
| 22..... | 1.65 | February 1, 1884. |
| 23..... | 1.55 | May 1, 1884. |
| 24..... | 1.40 | August 1, 1884. |
| 25..... | 1.65 | November 1, 1884. |
| 26..... | 1.65 | February 1, 1885. |
| 27..... | 1.72 | May 1, 1885. |
| 28..... | 2.05 | August 1, 1885. |
| 29..... | 2.03 | November 1, 1885. |
| 30..... | 2.05 | February 1, 1886. |
| 31..... | 2.03 | May 1, 1886. |
| 32..... | 2.15 | August 1, 1886. |
| 33..... | 2.10 | November 1, 1886. |
| 34..... | 2.10 | February 1, 1887. |
| 35..... | 2.10 | May 1, 1887. |
| 36..... | 2.10 | August 1, 1887. |
| 37..... | 2.10 | November 1, 1887. |
| 38..... | 2.10 | February 1, 1888. |
| 39..... | 2.10 | May 1, 1888. |
| 40..... | 2.10 | August 1, 1888. |
| 41..... | 2.10 | November 1, 1888. |
| 42..... | 2.10 | February 1, 1889. |
| 43..... | 2.10 | May 1, 1889. |
| 44..... | 2.10 | August 1, 1889. |
| 45..... | 2.10 | November 1, 1889. |
| 46..... | 2.10 | February 1, 1890. |

| Call No. | Ratio. | Date issued. |
|----------|--------|-------------------|
| 47..... | 2.10 | May 1, 1890. |
| 48..... | 2.10 | August 2, 1890. |
| 49..... | 2.52 | November 1, 1890. |
| 50..... | 2.40 | February 1, 1891. |
| 195 | | |
| 51..... | 2.25 | May 1, 1891. |
| 52..... | 2.25 | August 1, 1891. |
| 53..... | 2.20 | November 1, 1891. |
| 54..... | 2.20 | February 1, 1892. |
| 55..... | 2.20 | May 1, 1892. |
| 56..... | 2.20 | August 1, 1892. |
| 57..... | 3.30 | November 1, 1892. |
| 58..... | 2.20 | February 1, 1893. |
| 59..... | 2.20 | May 1, 1893. |
| 60..... | 2.20 | August 2, 1893. |
| 61..... | 2.20 | November 1, 1893. |
| 62..... | 2.25 | February 1, 1894. |
| 63..... | 2.25 | May 1, 1894. |
| 64..... | 2.25 | August 1, 1894. |
| 65..... | 2.25 | November 1, 1894. |
| 66..... | 2.25 | February 1, 1895. |
| 67..... | 2.61 | May 1, 1895. |
| 68..... | 2.40 | August 1, 1895. |
| 69..... | 2.40 | November 1, 1895. |
| 70..... | 2.40 | February 1, 1896. |
| 71..... | 2.40 | May 1, 1896. |
| 72..... | 2.40 | August 1, 1896. |
| 73..... | 2.40 | November 1, 1896. |
| 74..... | 2.40 | February 1, 1897. |
| 75..... | 2.40 | May 1, 1897. |
| 76..... | 2.40 | August 1, 1897. |
| 77..... | 2.40 | November 1, 1897. |
| 78..... | 2.50 | January 30, 1898. |
| 79..... | 3.00 | May 2, 1898. |
| 80..... | 3.00 | August 2, 1898. |
| 196 | | |
| 81..... | 3.00 | November 1, 1898. |
| 82..... | 3.00 | February 1, 1899. |
| 83..... | 3.00 | May 1, 1899. |
| 84..... | 3.00 | August 2, 1899. |
| 85..... | 3.00 | November 1, 1899. |
| 86..... | 3.00 | January 30, 1900. |
| 87..... | 3.00 | May 2, 1900. |
| 88..... | 3.25 | August 2, 1900. |
| 89..... | 3.25 | November 1, 1900. |
| 90..... | 3.25 | January 30, 1901. |

Call No.

Ratio.

Date issued.

| | | |
|----------|------|-------------------|
| 91..... | 3.25 | May 2, 1900. |
| 92..... | 3.60 | August 2, 1901. |
| 93..... | 3.35 | November 1, 1901. |
| 94..... | 3.80 | January 30, 1902. |
| 95..... | 3.80 | May 2, 1902. |
| 96..... | 3.75 | August 2, 1902. |
| 97..... | 3.25 | November 1, 1902. |
| 98..... | 3.25 | February 1, 1903. |
| 99..... | 3.25 | May 2, 1903. |
| 100..... | 3.25 | August 2, 1903. |
| 101..... | 3.80 | November 1, 1903. |
| 102..... | 3.30 | February 1, 1904. |
| 103..... | 3.80 | May 2, 1904. |
| 104..... | 3.80 | August 2, 1904. |
| 105..... | 3.60 | November 1, 1904. |
| 106..... | 3.60 | February 1, 1905. |
| 107..... | 3.80 | May 2, 1905. |
| 108..... | 3.60 | August 2, 1905. |
| 109..... | 3.80 | November 1, 1905. |
| 110..... | 3.80 | February 1, 1906. |
| 111..... | 3.50 | May 1, 1906. |
| 112..... | 3.75 | August 1, 1906. |
| 113..... | 3.20 | November 1, 1906. |

PLAINTIFF'S EXHIBIT "E."

The amount of each call in the Safety Fund Department is determined as follows:

By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as illustrated in the table of graduated assessment rates on the back of the certificate, at the attained age of each member whose certificate is in force, is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with advancing age each year up to the age of 65. Beyond that age the rate for the age does not increase, and any variation in the assessment is due to a variation in mortality.

T. F. LAWRENCE,
Secretary.

| Call No. | Date. | Ratio. |
|----------|------------|--------|
| 90. | Feb., 1901 | 3.25 |
| 91. | May, 1901 | 3.25 |
| 92. | Aug., 1901 | 3.6 |
| 93. | Nov., 1901 | 3.35 |
| 94. | Feb., 1902 | 3.8 |
| 95. | May, 1902 | 3.8 |
| 96. | Aug., 1902 | 3.75 |
| 97. | Nov., 1902 | 3.25 |
| 98. | Feb., 1903 | 3.25 |
| 198 | | |
| 99. | May, 1903 | 3.25 |
| 100. | Aug., 1903 | 3.25 |
| 101. | Nov., 1903 | 3.8 |
| 102. | Feb., 1904 | 3.3 |
| 103. | May, 1904 | 3.8 |
| 104. | Aug., 1904 | 3.8 |
| 105. | Nov., 1904 | 3.6 |
| 106. | Feb., 1905 | 3.6 |
| 107. | May, 1905 | 3.8 |
| 108. | Aug., 1905 | 3.6 |
| 109. | Nov., 1905 | 3.8 |
| 120. | Aug., 1908 | 3.60 |
| 111. | May, 1906 | 3.5 |
| 112. | Aug., 1906 | 3.75 |
| 113. | Nov., 1906 | 3.20 |
| 114. | Feb., 1907 | 3.50 |
| 115. | May, 1907 | 3.55 |
| 116. | Aug., 1907 | 3.20 |
| 117. | Nov., 1907 | 3. |
| 118. | Feb., 1908 | 3.20 |
| 110. | May, 1908 | 3.80 |
| 119. | May, 1908 | 3.80 |
| 121. | Nov., 1908 | 3.30 |
| 122. | Feb., 1909 | 3.80 |
| 123. | May, 1909 | 3.80 |

199

PLAINTIFF'S EXHIBIT "F."

(Copy.)

You can always satisfy yourself that you are assessed in accordance with your policy contract. If you will bear in mind that the rate at age 60 is \$2.68, dividing this rate into the amount of your assessment will give you the ratio or number of times the rate. The ratio in the current call is 3 50/100. Multiplying this by \$2.68 we have \$9.38 as the assessment on \$1,000.00; \$93.80 the assessment on \$10,000.00.

EXHIBIT "B."

Depositions.

Present on Behalf of Plaintiff: Smith W. Bennett.

Present on Behalf of Defendant: Harry B. Arnold.

Mr. Arnold: I wish to state on behalf of the defendant that we object to the jurisdiction of the court in this case and protest against the exercise of such jurisdiction herein, and appear here solely because we are forced to appear by the action of the court in these cases.

GEORGE D. FRY, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

Direct examination.

By Mr. Bennett:

Q. 1. State your name.

A. George D. Fry.

Q. 2. Where do you reside?

A. 2320 North Fourth street, Columbus, Ohio.

Q. 3. Were you ever employed by the defendant, The Hartford Life Insurance Company? If so, when, and in what capacity?

A. As special agent, afterwards as general agent; in '83 as special.

Q. 4. How many years were you so employed?

A. About seven.

Q. 5. And what was your territory?

A. Ohio, southern Ohio.

Q. 6. Are you acquainted with the plaintiff?

A. I am.

Q. 7. Are you familiar with the terms of the policy that was held by the plaintiff in the defendant company?

A. I am.

Q. 8. Have you examined the table of rates on the back of this policy?

A. I have.

Q. 9. Now, referring to the table of graduated assessment rates for death losses for every \$1,000 of a total indemnity of \$1,000,000, I call to your attention the provision that after the policyholder arrives at the age of sixty years, the rate provided for therein shall be \$2.68. Are you familiar with that provision?

A. I am.

Q. 10. State whether there was any direction given you by the company, during the period of your service with them, with reference to that table of rates or any attempted changes therein.

A. To the best of my knowledge there was a change made in the rate in '81.

Q. 11. That is, the year 1881?

A. 1881.

Q. 12. State what that change was.

A. The change was from—graduated from 65 to 60. That change was made in '81.

Q. 13. And state what that provision was.

A. They were graduated to 60 years only. \$2.68 at 60 years of age. That was written part of '81, all of the year '82, and up to about June of '83.

201 Q. 14. How was that change evidenced, if at all? By endorsement on the policy or otherwise?

A. By endorsement on the policy.

Q. 15. You may state whether there was any agreement on the part of the plaintiff with regard to that change.

A. None whatever.

Q. 16. State if there was a slip or rider to be attached to the policy presented by you to the plaintiff.

A. There was.

Q. 17. What was the purpose of the presentation to the plaintiff by you?

A. To have them agree to the \$4.00 rate.

Q. 18. Did he so agree?

A. Quite a number agreed; others refused.

Q. 19. Did this particular plaintiff ever agree?

A. No; never did.

Q. 20. State whether you presented such slip or rider to the plaintiff, and if so for what purpose?

A. I presented the slip to the plaintiff, but they objected to signing it, that is, his consent to pay \$4.00 instead of \$2.68.

Q. 21. From whom had you received such slips or riders?

A. From the company.

Q. 22. How were they delivered to you?

A. I received them by mail.

Q. 23. Under whose direction were you acting in thus presenting these slips or riders?

A. The president of the company.

Q. 24. What was his name—at that time?

A. George E. Keeney.

202 Q. 25. I hand you here what purports to be a duplicate copy of such slips or riders, which the stenographer has marked "Exhibit A," and ask you if that is a true copy of the original presented to plaintiff?

A. It is.

Q. 26. What were your instructions from President Keeney with regard to such slips or riders?

A. To secure their signatures.

Q. 27. State whether you made any report to the company of your success or failure in obtaining their signatures to such slips or riders.

A. I mailed in the original to the company. Each signature secured was mailed in to the company.

Q. 28. Do you know what the company thereafter did with such slips as you mailed in?

A. Put them on file in their home office.

Q. 29. Did you thereafter call at the home office of the company in Hartford, Connecticut?

A. I did.

Q. 30. Mr. Fry, there are now five cases pending in the Court of Common Pleas of Franklin county, Ohio, in which the following persons are plaintiffs: Otto E. K. Ruhrmann, Robert H. Langdale, Alonzo J. Doud, Paul Hitchcock et al., administrators of the estate of William H. Hitchcock, and I. D. Fry. State whether or not you were acquainted with each of the said plaintiffs during their lifetime; and, if any of them have deceased, state which ones.

A. Well acquainted with all. They are all alive with one exception, I. D. Fry. They are all living today, with one exception—and William Hitchcock excuse me—the two.

Q. 31. I. D. Fry and William Hitchcock?

A. I. D. Fry and William Hitchcock.

203 Q. 32. State if you were the agent of the defendant company that issued the policies to any of these plaintiffs. Well, in other words, if you were the agent that sold the insurance to these plaintiffs.

A. I did not sell all of these plaintiffs.

Q. 33. State which ones you did sell.

A. I sold I. D. Fry. I am not sure as to Ruhrmann whether it was Sulzer or who placed his application; that came through the Cincinnati agency at the time. Mr. Mr. Langdale, I think, was written by Mr. Mosher; I couldn't say without seeing their contract. They had the agent's name—

Q. 34. I am only asking, Mr. Fry, as to the particular ones that you wrote.

A. Well, I. D. Fry is the only particular one, I think of the ones there.

Q. 35. I. D. Fry?

A. I. D. Fry.

Q. 36. State whether or not you called upon each of these plaintiffs with regard to executing these slips.

A. I did.

Q. 37. Now, Mr. Fry, do you know what the company did with regard to the amounts of the assessments on these plaintiffs' policies after you had failed to get their signatures on the slips?

A. They charged them all the \$4.00 rate.

Q. 38. Did you have any conversation with the president or secretary of the company relative thereto?

A. I received my instructions in regard to these slips.

Q. 39. I mean relative to the change of practice by which they were all to be assessed at a uniform rate?

A. That was brought up through the department here; called to the president's attention—to that fact that they were discriminating.

204 Q. 40. When you speak of the department here, what department do you refer to?

A. The insurance department of the state.

Q. 41. Who was the superintendent of insurance at the time?

A. Mr. A. I. Vorys.

Q. 42. And what did the company thereafter do with regard to charging the higher rate, or assessing the higher rate?

A. They tried to secure their signatures to grant them that permission after this question was raised.

Q. 43. You mean after the question was raised by the insurance department of the state?

A. Yes.

Q. 44. And thereafter what was done by the defendant company?

A. I called on these parties to secure their signatures to the agreement to the increase.

Q. 45. With what success?

A. Well, I had a great many to sign them and agree to it.

Q. 46. Thereafter was the assessment at the \$4.00 rate made uniform?

A. It was made uniform—they were assessing them the \$4.00 rate when this question was raised in regard to making it uniform; they were to assess them all the same whether they had a right to or not.

Q. 47. Well, thereafter did the company continue to assess them at the \$4.00 rate or at what rate?

A. They did.

Q. 48. Do you know Charles H. Bacall?

A. I never met Mr. Bacall.

Q. 49. Do you know what position he held?

A. He was secretary of the company.

Q. 50. Of the defendant company?

A. Yes, sir.

Q. 51. Do you know whether any parties, not meaning the plaintiff, had been rebated by the company any amounts, and if so, what?

205 A. There were several rebates. Mr. Schultz, the importer, was paid—he received \$270 rebate.

Q. 52. Rebate of what?

A. Of the overcharge.

Q. 53. Overcharge on what?

A. The rate, from the two sixty-eight, increased to \$4.00; two sixty-eight to \$4.00.

Q. 54. How do you know of that rebate having been paid?

A. Why, he showed me the letter of his secretary.

Q. 55. Do you know whether that was done by order of the company or any of its officers?

A. It was done by order of Stephen Ball, who was then secretary.

Q. About what time was that?

A. It was about April 29, '91, that office used to assess him from that date on at the \$2.68 rate instead of \$4.00.

(By Mr. Arnold):

Q. What was his name?

A. J. F. Schultz; he is now deceased.

Q. 57. Do you know of any other instances of that kind?

A. I know Mr. Gordon was rebated by Mr. Charles H. Bacall.

Q. 58. Do you know the amount of the rebate?

A. I do not remember the amount.

(By Mr. Arnold):

Q. What is his name?

A. W. J. M. Gordon; he is now deceased.

Q. 59. Now, Mr. Fry, were you and are you familiar with the rule by which the defendant company made computation of the amount of assessment per thousand of insurance? I am not asking you what the rule was, but whether you are familiar with such rule?

A. Yes; yes, sir.

Q. 60. Have you made a computation of the amounts of the assessment paid by Mr. Alonzo J. Doud after he arrived at the age of 60; I mean, if the difference between the \$2.68 rate and the \$4.00 rate?

A. I did.

Q. 61. In making such computation, state what rule you observed.

A. I observed the rule of the company; the ratio and the rule of deaths per table rate; the mortality to the ratio.

Q. 62. Have you the amounts of such computation with you?

A. No; I have the ratios with me, what the company issues, showing what they charged from the beginning to the present.

Q. 63. No, I mean have you now in your possession the result of your computation?

A. Yes, I have.

Q. 64. Now, you may state with regard to the Doud policy from what period you have made such computation?

A. From the attained age of 60 to the—I forgot the date—up to his last assessment.

Q. I hand you a paper, which for purposes of identification I have marked "Exhibit B," and ask you what that paper is.

A. That shows the overcharge from 2.68 to 4.00 rate.

Q. 66. And who made the computation therein contained?

A. I did.

Q. 67. That is, that computation down to the last assessment?

A. That was for the last assessment he paid. It was assessment No. 152, inclusive, 152.

Q. 68. In the case of Mr. Doud, state what was done with his policy?

A. Mr. Doud still holds his policy; it is in his possession.

Q. 69. Do you know whether it is kept in force or not?

A. It is.

Q. 70. How much, if at all, should be added to that for each assessment or for each call after No. 152?

A. There should be added the additional assessments and the interest.

Q. 71. Will you have attached as part of your deposition the Exhibit A heretofore referred to as the slip or rider?

A. I will.

Q. 72. Will you have attached to your deposition as part thereof a copy of the computation made by you under mark of Exhibit B?

A. I will.

The Exhibit A so identified is herewith presented to the notary and attached hereto, as marked by the stenographer.

Exhibit B so identified is herewith presented to the notary and attached hereto, as marked by the stenographer.

Cross-examination.

By Mr. H. B. Arnold:

X Q. 1. Are you related to the late George D. Fry, the plaintiff in case No. 74211?

A. That is I. D. Fry?

X Q. 2. I. D. Fry?

A. Brother.

X Q. 3. When did you first become connected with the Hartford Life?

A. In '82.

X Q. 4. You say you were special agent?

A. I was special agent at that time, and then I succeeded J. A. Sulzer, general agent, Cincinnati.

X Q. 5. You say you were special agent. Does that mean soliciting agent?

A. Soliciting agent.

208 X Q. 6. You say the rate was changed in 1881?

A. That was before I was with the company. They were writing this policy when I first wrote the business.

X Q. 7. You mean in '82 they were writing the present policy?

A. They were writing this two sixty-eight rate.

X Q. 8. Your information as to the change in '81 was gotten from what somebody else told you?

A. I got it off the record at Hartford, Connecticut.

X Q. 9. You say the change was evidenced by endorsement. You mean a different table of rates, or the contents of the table on a certificate or in the body of the certificate?

A. In the body of the certificate.

X Q. 10. It was evidenced by the change in the language on the written contracts?

A. By those following this rebate and were so recognized by Stephan Ball as correct.

X Q. 11. You say you had instructions as to these riders. Were they contained in letters written to you?

A. They were given me by General Keeney, George E. Keeney.

X Q. 12. By letter?

A. In person. We had some correspondence afterwards. Quite a few letters passed between us.

X Q. 13. You said also you made reports. Those were written reports, I take it?

A. What was that question?

X Q. 14. Those were written reports?

A. They were all printed and signed by these insured members.

X Q. 15. Then the reports you made were by mail, by letter?

A. By letter.

X Q. 16. You spoke of a so-called rebate to J. F. Schultz.

209 The information you say about that was the letter you said he showed to you?

A. The letter—not only the letter he showed to me, Mosher, who wrote it, Will Mosher, the general agent, spoke of this change in the contract and he wrote the company in regard to Schultz.

X Q. 17. What I mean: You personally did not make the rebate or have a personal knowledge of that rebate to Mr. Schultz?

A. I did not; that is over the secretary's signature.

X Q. 18. And the same is true as to Mr. Gordon?

A. Mr. Gordon. It is all on file at the home office.

X Q. 19. In this computation in Exhibit B, please explain how you arrived at the so-called overcharge.

A. This was the assessment the company sent out. These were the assessments that the company sent out.

X Q. 20. That is under the heading "Assessments?"

A. Under the head "Assessment." Call number so and so; quarterly call; they assessed this party \$27.89, calculated at \$4.00, you see. I calculated at \$2.86. The \$2.86 shows an overcharge of \$1.76. Instead of \$27.89 it should be \$26.13.

X Q. 21. Arriving at that, what method do you use?

A. I mean \$2.68 instead of \$2.86.

X Q. 22. What method do you use in arriving at that twenty-six thirteen?

A. Why, simply—that mortality ratio was simply \$3.25 per death; now they charged \$3.25 on that table rate; \$2.68; they calculated that at \$4 which their policy did not call for.

210 X Q. 23. I want you to just state, Mr. Fry, what figures you used in getting that result twenty-six thirteen in that column?

A. By computing the age ratio with the mortality ratio; that is the same mortality ratio that they used in obtaining this. I simply took the age ratio and the mortality ratio, the age ratio according to this contract; they changed it to \$4.00.

X Q. 24. What did you do then? You took the age ratio and the mortality ratio—

A. Why just multiplied the age ratio with the mortality ratio.

X Q. 25. Where did you get the mortality ratio?

A. From the company's call.

X Q. 26. Then by what method do you arrive at twenty-six thirteen?

A. Just according to their rule.

X Q. 27. I mean, what do you do here, multiply, or divide, or subtract—

A. I multiplied this mortality ratio with the age ratio.

X Q. 28. That is, you took the age ratio and multiplied that with the mortality ratio which the company had used?

A. Yes.

X Q. 29. And then multiplied that by the amount of the insurance?

A. No, I didn't—that is all the multiplying there was—the difference—I will show you here. The company sent out a call, twenty-seven eighty-nine. Now, here—I got on the wrong one. These steps are the age from two sixty-eight, you see. The charge at 60 is graduated to two sixty-eight. Now then coming 61 they charged him three nought eight instead of two eighty-six. September call was calculated at two eighty-six, steps a few cents each call.

X Q. 30. Then I understand you that, for instance, taking, on Exhibit A the assessment on call 117, you take two sixty-eight, multiply that by the mortality ratio of three—

A. Three deaths—

X Q. 31. And then multiply that age by the three thousand—

A. The amount he holds.

X Q. 32. You arrive at the result of twenty-four twelve?

A. I do.

Mr. Arnold: That is all I want to get at.

Re-examination.

By Mr. Bennett:

R. X 1. If you have with you a rule obtained from the defendant company, of which such computation is made, state what it is—what that rule is.

A. It is contained in the following slip, which is marked by the stenographer "Exhibit C."

R. X 2. Where did you get the printed slip of which you have a copy, which is hereto attached, marked "Exhibit C?"

A. They were mailed out by the secretary of the company.

R. X 3. And your computation attached hereto, marked "Exhibit B," state whether that is computed under that rule?

A. It is.

R. X 4. Did I understand you that the amount of the computation is based upon the difference between the rate at the attained age of 60 at \$2.68 and the amount of \$4.00 as actually assessed by the company; is that correct?

A. That is correct.

GEORGE D. FRY

EXHIBIT "A."

Duplicate.

In consideration of the Hartford Life Insurance Company assessing my certificate No. — quarterly, and for the purpose of determining the amount of any quarterly assessment, including my said certificate with all certificates then in force in the Safety Fund Department issued prior to my said certificate and with tables of rates to age sixty-five, I hereby ratify and consent to the method heretofore employed by said company in determining the assessments on my said certificate and agree that the said company shall, in future, levy assessments against my certificate, in the same manner, and for like amount at the same attained age, as shall be levied against the aforesaid certificates issued prior to my said certificate.

Dated at — this — day of — 19—.

— — —

EXHIBIT B.

Alonzo J. Doud.

213

| Date. | Quarterly call. | Amt. of insurance. | Age ratio. | Mortality ratio. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|------------|---------------------|--------------|-------------|-----------|
| 1899. | | | | | | | |
| March | 82 | \$3,000 | \$2.86 | 3.00 | \$25.74 | \$24.12 | \$1.62 |
| June | 83 | 3,000 | 2.86 | 3.00 | 25.74 | 24.12 | 1.62 |
| September | 84 | 3,000 | 2.86 | 3.00 | 25.74 | 24.12 | 1.62 |
| December | 85 | 3,000 | 2.86 | 3.00 | 25.74 | 24.12 | 1.62 |
| 1900. | | | | | | | |
| March | 86 | 3,000 | 3.08 | 3.00 | 27.72 | 24.12 | 3.60 |
| June | 87 | 3,000 | 3.08 | 3.00 | 27.72 | 24.12 | 3.60 |
| September | 88 | 3,000 | 3.08 | 3.25 | 30.03 | 26.13 | 3.90 |
| December | 89 | 3,000 | 3.08 | 3.25 | 30.03 | 26.13 | 3.90 |
| 1901. | | | | | | | |
| March | 90 | 3,000 | 3.30 | 3.25 | 32.17 | 26.13 | 6.04 |
| June | 91 | 3,000 | 3.30 | 3.25 | 32.17 | 26.13 | 6.04 |
| September | 92 | 3,000 | 3.30 | 3.60 | 35.64 | 28.94 | 6.70 |
| December | 93 | 3,000 | 3.30 | 3.35 | 33.16 | 26.93 | 6.23 |
| 1902. | | | | | | | |
| March | 94 | 3,000 | 3.65 | 3.80 | 41.61 | 30.55 | 11.06 |
| June | 95 | 3,000 | 3.65 | 3.80 | 41.61 | 30.55 | 11.06 |
| September | 96 | 3,000 | 3.65 | 3.75 | 41.66 | 30.15 | 10.91 |
| December | 97 | 3,000 | 3.65 | 3.25 | 36.66 | 26.13 | 9.46 |

1903.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|-------|
| March | 98 | 3,000 | 4.00 | 3.25 | 39.00 | 26.13 | 12.87 | 10.03 |
| June | 99 | 3,000 | 4.00 | 3.25 | 39.00 | 26.13 | 12.87 | 10.03 |
| September | 100 | 3,000 | 4.00 | 3.25 | 39.00 | 26.13 | 12.87 | 10.03 |
| December | 101 | 3,000 | 4.00 | 2.80 | 33.60 | 22.51 | 11.09 | 8.26 |

1904.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|-------|
| March | 102 | 3,000 | 4.00 | 3.30 | 39.60 | 26.53 | 13.07 | 9.41 |
| June | 103 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 10.83 |
| September | 104 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 10.83 |
| December | 105 | 3,000 | 4.00 | 3.60 | 43.20 | 28.94 | 14.26 | 10.26 |

214

1905.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 106 | 3,000 | 4.00 | 3.60 | 43.20 | 28.94 | 14.26 | 9.41 |
| June | 107 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 9.93 |
| September | 108 | 3,000 | 4.00 | 3.60 | 43.20 | 28.94 | 14.26 | 9.41 |
| December | 109 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 9.93 |

1906.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 110 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 9.03 |
| June | 111 | 3,000 | 4.00 | 3.50 | 42.00 | 28.14 | 13.86 | 8.31 |
| September | 112 | 3,000 | 4.00 | 3.75 | 45.00 | 30.15 | 14.85 | 8.91 |
| December | 113 | 3,000 | 4.00 | 3.20 | 38.40 | 25.73 | 12.67 | 7.60 |

EXHIBIT B.—Continued.

| Date. | Quarterly call. | Amt. of insurance. | Age ratio. | Mortality ratio. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|------------|---------------------|--------------|-------------|-----------|
| 1907. | | | | | | | |
| March | 114 | 3,000 | 4.00 | 3.50 | 42.00 | 13.86 | 7.48 |
| June | 115 | 3,000 | 4.00 | 3.55 | 42.60 | 14.06 | 7.59 |
| September | 116 | 3,000 | 4.00 | 3.20 | 38.40 | 12.67 | 6.84 |
| December | 117 | 3,000 | 4.00 | 3.00 | 36.00 | 11.88 | 6.41 |
| 1908. | | | | | | | |
| March | 118 | 3,000 | 4.00 | 3.20 | 38.40 | 12.67 | 6.08 |
| June | 119 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 7.22 |
| September | 120 | 3,000 | 4.00 | 3.60 | 43.20 | 14.26 | 6.84 |
| December | 121 | 3,000 | 4.00 | 3.30 | 39.60 | 13.07 | 6.27 |
| 1909. | | | | | | | |
| March | 122 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 6.32 |
| June | 123 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 6.32 |
| September | 124 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 6.32 |
| December | 125 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 6.98 |
| 1910. | | | | | | | |
| March | 126 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 5.98 |
| June | 127 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 5.98 |
| September | 128 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 5.98 |
| December | 129 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 5.98 |

1911.

265

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 130 | 3,000 | 4.00 | 4.40 | 52.80 | 35.38 | 17.42 | 5.22 |
| June | 131 | 3,000 | 4.00 | 4.40 | 52.80 | 35.38 | 17.42 | 5.22 |
| September | 132 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 4.98 |
| December | 133 | 3,000 | 4.00 | 4.35 | 52.20 | 34.97 | 17.23 | 5.16 |

1912.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 134 | 3,000 | 4.00 | 3.95 | 47.40 | 31.76 | 15.64 | 3.75 |
| June | 135 | 3,000 | 4.00 | 5.65 | 67.80 | 45.43 | 22.37 | 5.36 |
| September | 136 | 3,000 | 4.00 | 5.15 | 61.80 | 41.41 | 20.39 | 4.89 |
| December | 137 | 3,000 | 4.00 | 3.77 | 45.24 | 30.31 | 14.93 | 3.58 |

1913.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 138 | 3,000 | 4.00 | 3.95 | 47.40 | 31.76 | 15.64 | 2.81 |
| June | 139 | 3,000 | 4.00 | 5.94 | 71.28 | 47.76 | 23.52 | 4.23 |
| September | 140 | 3,000 | 4.00 | 4.86 | 58.32 | 39.07 | 19.25 | 3.46 |
| December | 141 | 3,000 | 4.00 | 4.10 | 49.20 | 32.96 | 16.24 | 2.92 |

1914.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 142 | 3,000 | 4.00 | 5.63 | 67.56 | 45.27 | 22.29 | 2.67 |
| June | 143 | 3,000 | 4.00 | 5.52 | 66.24 | 44.38 | 21.86 | 2.62 |
| September | 144 | 3,000 | 4.00 | 4.73 | 56.76 | 38.03 | 18.73 | 2.24 |
| December | 145 | 3,000 | 4.00 | 4.67 | 56.04 | 37.55 | 18.49 | 2.21 |

EXHIBIT B.—Continued.

| Date. | Quarterly call. | Amt. of insurance. | Age ratio. | Mortality ratio. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|------------|---------------------|--------------|-------------------|-------------------|
| 1915. | | | | | | | |
| March | 146 | 3,000 | 4.00 | 6.29 | 75.48 | 24.91 | 1.49 |
| June | 147 | 3,000 | 4.00 | 5.36 | 64.32 | 21.23 | 1.27 |
| September | 148 | 3,000 | 4.00 | 6.93 | 83.16 | 27.44 | 1.64 |
| December | 149 | 3,000 | 4.00 | 4.65 | 55.80 | 18.41 | 1.10 |
| 1916. | | | | | | | |
| March | 150 | 3,000 | 4.00 | 3.83 | 45.96 | 15.17 | |
| June | 151 | 3,000 | 4.00 | 7.37 | 88.44 | 29.19 | |
| September | 152 | 3,000 | 4.00 | 6.70 | 80.40 | 26.53 | |
| Interest | | | | | | <u>\$1,007.91</u> | <u>\$401.16</u> |
| Total | | | | | | <u>\$401.16</u> | <u>\$1,409.07</u> |

216

EXHIBIT "C."

The amount of each call in the Safety Fund Department is determined as follows:

By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as illustrated in the table of graduated assessment rates on the back of the certificate, at the attained age of each member whose certificate is in force, is ascertained.

This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with the advancing age each year up to the age of 65. Beyond that age the rate for the ages does not increase, and any variation in the assessment is due to a variation in mortality.

E. R. INGRAHAM,
Secretary.

(Over)

Men's Division.

| Call No. | Date. | Ratio. |
|----------|-----------------|--------|
| 101. | Nov., 1903..... | 2.8 |
| 102. | Feb., 1904..... | 3.3 |
| 103. | May, 1904..... | 3.8 |
| 104. | Aug., 1904..... | 3.8 |
| 105. | Nov., 1904..... | 3.6 |
| 106. | Feb., 1905..... | 3.6 |
| 107. | May, 1905..... | 3.8 |
| 108. | Aug., 1905..... | 3.6 |
| 217 | | |
| 109. | Nov., 1905..... | 3.8 |
| 110. | Feb., 1906..... | 3.8 |
| 111. | May, 1906..... | 3.5 |
| 112. | Aug., 1906..... | 3.75 |
| 113. | Nov., 1906..... | 3.20 |
| 114. | Feb., 1907..... | 3.50 |
| 115. | May, 1907..... | 3.55 |
| 116. | Aug., 1907..... | 3.20 |
| 117. | Nov., 1907..... | 3 |
| 118. | Feb., 1908..... | 3.20 |
| 119. | May, 1908..... | 3.80 |
| 120. | Aug., 1908..... | 3.60 |
| 121. | Nov., 1908..... | 3.30 |
| 122. | Feb., 1909..... | 3.80 |

| Call No. | Date. | Ratio. |
|----------|-----------------|--------|
| 123. | May, 1909..... | 3.80 |
| 124. | Aug., 1909..... | 3.80 |
| 125. | Nov., 1909..... | 4.20 |
| 126. | Feb., 1910..... | 4.20 |
| 127. | May, 1910..... | 4.20 |
| 128. | Aug., 1910..... | 4.20 |
| 129. | Nov., 1910..... | 4.40 |
| 130. | Feb., 1911..... | 4.40 |
| 131. | May, 1911..... | 4.20 |
| 132. | Aug., 1911..... | 4.35 |
| 133. | Nov., 1911..... | 3.95 |
| 134. | Feb., 1912..... | 5.65 |
| 135. | May, 1912..... | 5.15 |
| 136. | Aug., 1912..... | 3.77 |
| 137. | Nov., 1912..... | 3.95 |
| 138. | Feb., 1913..... | 5.94 |
| 139. | May, 1913..... | |

[Certificate attached.]

218 Supreme Court of the State of Ohio, January Term, A. D.
1921.

(Minute Book No. 35, Page 633.)

Number: 16833.

Title of Case.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error.
v.

ALONZO J. DOUDS, Defendant in Error.

Action: Motion for an Order Directing the Court of Appeals
Franklin County to Certify Its Record.

Error to the Court of Appeals of Franklin County.

Attorneys:

Arnold & Game, Columbus, Ohio; Jones, Hocker, Sullivan
Angert, St. Louis, Mo., for plaintiff in error.

Bennett, Westfall & Bennett, Columbus, attorney for defendant
error.

Transcript of Docket Entries, Memoranda of Pleadings, etc., Filed, Writs Issued, Judgments, Orders, and Decrees.

1920.

- Nov. 16. Motion for an order directing the Court of Appeals to certify its record and proof of service filed.
- " 27. Plaintiff's printed briefs filed.
- " 30. Petition in error (as of right) and waiver of summons filed.
- " " Court of Appeals transcript, original papers and bill of exceptions filed.
- Dec. 1. Papers and motion taken by Toothaker & Rodenfels.
- " 1. Proof of service of plaintiff's briefs filed.
- " 14. Papers returned by Toothaker & Rodenfels.
- " 17. Defendant's printed briefs on motion to certify record and on merits of case filed.
- " 18. Printed record filed. 12/20/20, proof of service filed.
- " 30. Plaintiff's printed brief (16833-16834) filed. 1/3/21 proof of service filed.

1921.

- Nov. 15. Judgment Affirmed. (Journal No. 29, page 45.)
- " 16. Printer's bill filed.
- " 19. Mandate issued.
- " 19. Original Papers and bill of exceptions sent to Clerk.
- " 26. Receipt for papers filed.

219

Transcript of Journal Entries.

No. 16833.

THE HARTFORD LIFE INSURANCE COMPANY

v.

ALONZO J. DOUDS.

"Error to the Court of Appeals of Franklin County.

Nov. 15th, 1921.

"This cause came on to be heard upon the transcript of the record of the Court of Appeals of Franklin County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the judgment of the said Court of Appeals be, and the same hereby is, affirmed; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at \$—.

Ordered, that a special mandate be sent to the Court of Appeals of Franklin County, to carry this judgment into execution."
(Journal No. 29, page 45.)

220

Supreme Court of the State of Ohio.

STATE OF OHIO,

City of Columbus, ss:

I, Wilbur C. Lawrence, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said Court.

I further certify that the printed copy of the record attached hereto is a true and correct copy of the record and proceedings filed in said cause in the Supreme Court of Ohio, and a certified copy of the opinion of the Supreme Court is also attached hereto.

In witness whereof, I have hereunto subscribed my — and affixed the Seal of the Supreme Court of Ohio, this 27th day of December, A. D. 1921.

[Seal of the Supreme Court of the State of Ohio.]

WILBUR C. LAWRENCE,

Clerk Supreme Court of Ohio.

By SEBA H. MILLER,

Deputy.

221

No. 16833.

Decided November 15, 1921.

Error to the Court of Appeals of Franklin County.

THE HARTFORD LIFE INSURANCE CO.

v.

DOUDS.

1. Upon the filing of a petition in an Ohio court of competent jurisdiction by one of its citizens against a foreign insurance company, based upon a contract for insurance issued by such foreign insurance company to such citizen, such court upon proper service of summons has jurisdiction of the subject matter to render a money judgment for the amount found due upon such contract, and upon proper proof to make an accounting and render judgment for all sums of money wrongfully obtained under color of such contract; and the exercise of such jurisdiction and the rendering of such judgment do not interfere with the discretion, the internal management or the control of such company, and are not in violation of the 14th Amendment of the Constitution of the United States.

2. Where the contract of insurance provides for assessments "according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such certificates in force at the date of such death," the insurance company is not authorized to levy assessments in excess of the rates provided in the table of graduated assessment rates provided in such policy.
3. Where the insured pays assessment rates levied in excess of the rates provided in the policy and does not know and has not the means of knowing that he is paying rates in excess of the rates provided in the policy, such payments will not be construed to be voluntary payments either to the company or to the death-benefit fund of such company.
4. The duty of the insurance company with reference to the distribution of assessments collected under color of the contract of insurance in excess of the rates authorized in such contract is not different from its duty with reference to the assessments collected by it in accordance with the rates provided in the contract, and equity will impose upon such fund a trust like unto the trust provided in the contract for authorized assessments, to-wit, the duty of the trustee to distribute such assessments in accordance with the terms of the contract, and such duty is a continuing and subsisting duty until discharged, and the statutes of limitations will not begin to run against the payer of such assessments until he has knowledge that the insurance company has repudiated such obligation, or is distributing such assessments contrary to the provisions of the insurance contract.

223 This action was begun in the court of common pleas of Franklin county, Ohio, by present defendant in error, Alonzo J. Douds, against present plaintiff in error, the Hartford Life Insurance Company, for an accounting of excess assessments alleged to have been demanded and collected of plaintiff by defendant, for a money judgment for the amount so found due, and for an order restraining defendant from demanding and receiving an amount in excess of \$2.68 per assessment per \$1,000 of insurance, and for an order restraining defendant from forfeiting or lapsing the certificate of insurance for non-payment of excessive assessments.

The suit is based upon a policy of insurance issued by the defendant company to the plaintiff, a copy of which policy is attached to the petition and made a part thereof and reads as follows:

"EXHIBIT A.

*"Certificate of Membership.**"Benefit Not to Exceed \$1,000.**"No. —.*

Safety Fund Department.

Age 45.

*"Sample Policy.**"The**"Hartford Life and Annuity Ins. Co.**"of**"Hartford, Connecticut,*

"In consideration of the representations, agreements and warranties made in the application herefor, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, to create a Safety Fund, as hereinafter described, and of Three Dollars per annum, for expenses, to be paid as hereinafter conditioned and of the further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Alonzo J. Douds, with the following agreements:

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed, five years prior to the date of any such division, their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee

tee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force;

225 and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division.

The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that so long as any Certificate of Membership in the Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

"Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required, together with any balance due said Company)—to his estate, otherwise to his legal representatives within ninety days after the receipt of such proofs, upon presentation and surrender of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

"And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

"1. Application Made Part of Contract.—The application on the faith of which this Certificate issues is hereby referred to and made part of this contract.

"2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for ex-

penses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by monthly or other pro rata installments of the same in advance for periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assessment in accordance with the Table of Graduated Assessment Rates, as printed hereon, within thirty days from day on which notice bears date.

226 4 further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement with the Trustees aforesaid, a copy of which is printed hereon and hereby made a part of this contract; all such payments to be made direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission: And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

"3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if either the monthly dues, assessments, or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustees of the Safety Fund; and that if a legal and just claim to benefit, under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, or before January 1, 1885, and the sum collected on the assessment to be made in such event shall be paid over, as hereinbefore stipulated; or such claim shall arise after said Fund shall have accumulated to said amount, or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

"4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, or delivered by an agent of the Company, shall be deemed a legal and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary, showing such facts shall be taken and accepted as conclusive evidence of the mailing of such notice, and of the facts aforesaid, as set forth in such transcript.

"5. Change of Residence of Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

"6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining under ground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delirium tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—or while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, misrepresentation, or false statement or statement not true made in the application on which this Certificate issues; or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

"7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

"8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on

failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

"9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. And that in case any Country, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company on active count of any moneys collected hereon, said member agrees to
228 pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to hold this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

"10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

"11. Powers of Agents.—Agents of the Company can not alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive money or assessments, dues, or Safety Fund deposits maturing and payable after the issue of this Certificate.

"In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 2nd day of May, one thousand eight hundred and eighty-three.

"(Signed)

T. R. FOSTER,
President.

"[SEAL.]

"(Signed) W. A. COWLES,
Ass. Secretary.

"(Agents of the Company are not authorized to make any indorsements on this certificate.)

"Trustee's Contract.

"This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford

said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

"Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual distribution of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said department at such times, who shall have contributed five years prior to the date of any such
229 division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars all subsequent receipts therefor shall be distributed by the said Company in like manner as the interest.'

"Said Company further agrees that if at any time after said Fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if and legally due, to pay the maximum indemnity provided for by the terms of any Certificates issued in said department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and distribute the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list, under path, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for a period of sixty days from this date.'

"And said Company further agrees that so long as any Certificate of membership in its Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned."

"Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders, as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

"And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successor, and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders, and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons then entitled.

"That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1873.

or until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information
231 required for the making of a proper distribution thereof as agreed with its Certificate holders.

"All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the Certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

"The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

"It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

"And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial

embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

"In Witness Whereof, the party of the first part has affixed hereunto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

"And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands

"Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

"[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,

"By E. H. CROSBY,
President, and

"STEPHEN BALL,
Secretary.

"[SEAL.]

SECURITY COMPANY,
"By ROBERT E. DAY,

President, and
"WILLIAM L. MATSON,
Treasurer.

232 "Table of Graduated Assessment Rates for Death Losses
Every \$1,000 of a Total Indemnity of \$1,000,000.

| Age. | Rate. | Age. | Rate. | Age. | Rate. |
|--------------|--------|--------|--------|--------|--------|
| 15 to 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.30 |
| 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| 23.... | .69 | 37.... | 1.03 | 50.... | 1.45 |
| 24.... | .71 | 38.... | 1.06 | 51.... | 1.50 |
| 25.... | .73 | 39.... | 1.09 | 52.... | 1.55 |
| 26.... | .75 | 40.... | 1.12 | 53.... | 1.60 |
| 27.... | .77 | 41.... | 1.14 | 54.... | 1.65 |
| 28.... | .79 | 42.... | 1.16 | 55.... | 1.70 |
| 29.... | .81 | 43.... | 1.18 | 56.... | 2.00 |
| 30.... | .83 | 44.... | 1.20 | 57.... | 2.10 |
| 31.... | .85 | 45.... | 1.22 | 58.... | 2.20 |
| 32.... | .88 | 46.... | 1.25 | 59.... | 2.30 |
| 33.... | .91 | 47.... | 1.30 | 60.... | 2.40 |
| 34.... | .94 | | | | |

"These rates decrease in proportion as the total indemnity in fact increases above one million dollars in amount, and are calculated as to cover the usual expense for collecting.

"Received of The Hartford Life and Annuity Insurance Company, of Hartford, Conn., — in full for all claims under this Certificate, No. — on the life of — —, deceased.

"— —, *Beneficiary.*

"— —, *Beneficiary.*

"Witness:

— —.

[Back of Policy.]

"This Company has no agents authorized to receive money on Assessments, Dues, or Safety Fund.

"No. 34501.

"Safety Fund Department.

"Certificate of Membership.

"Benefit not to exceed \$1,000.

"Issued by the

"Hartford Life and Annuity Insurance Co.,

"Hartford, Conn.

"Name, Alonzo J. Douds.

"Agent, — —.

"Read carefully all the conditions of this certificate.

"No person should be a party to a contract without knowing all conditions.

"After an Agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

"Always give Number of this Certificate in writing to

"Home Office.

"E. J. Thomas, Gen'l Agent.

"Know all men by these presents, That the undersigned beneficiary named in the within Certificate, issued to — — in consideration — have sold, assigned and conveyed to — — of — —, County — —, State of — —, and to his heirs and assigns forever, all — right, title, and interest in the within Certificate of Membership, subject to the terms and conditions thereof.

"I hereby constitute the said assignee or assignees its attorney, in my name, but to h— own use, to take all legal measures
 233 which may be proper to keep in force said Certificate and finally collect all amounts due and to become due thereunder, with power of substitution.

"Witness my hand and seal this — day of —, 18—.
 "— — — — — [SEAL.]

"If more than one beneficiary, they can sign below."

The petition in the common pleas court alleged that in 1898 the plaintiff reached the age of sixty years and that thereafter he was compelled to pay assessments in excess of the rate of \$2.68, in violation of his contract of insurance. He therefore prayed as hereinbefore stated.

To this petition, after demurrer and the overruling of the demurrer the defendant answered, saving the question of jurisdiction, averring that it was conducting a department of life insurance upon the mutual or assessment plan, and that the policy of insurance in question was issued under such plan, and averring that instead of issuing a separate call upon each death claim defendant had adopted the plan of quarterly assessments covering a number of death claims, averring that more than seventy assessments had been levied against the plaintiff since he reached the age of sixty, and averring that the policy provides that "The rates decrease in proportion as the total indemnity in force increases above one million dollars;" defendant in its answer further avers that the assessment rate provided for in the certificate is the rate of assessment at each age therein stated to be levied for each individual loss of \$1,000 upon the basis of one million dollars of outstanding insurance, and that if the total insurance in

234 force at the time of the levy of such assessment exceeds the sum of one million dollars the rate of assessment is to be proportionately decreased, and that where there is more than one death loss of \$1,000 to be assessed for at the time of the levy of such assessment the rate and amount of such assessment is accordingly increased by the number per thousand dollars of such death losses. Defendant further avers that at the time of each of the assessments complained of in the petition the insurance in force was largely in excess of one million dollars and varied in amounts at the time of each assessment; that at each assessment there was in excess of one death loss of \$1,000 to be assessed for, and that the number of deaths so to be assessed for at the time of such assessment varied; that an inquiry as to the proper rate of assessment involved and required the ascertainment of the total amount of insurance or indemnity in force at the time each assessment was levied, as well as the number of deaths for which each assessment was levied; that such an accounting would require a complete and exhaustive visitation of the affairs of the defendant at its home office in Hartford, Connecticut, over a period covering some eighteen years, and would be an interference with the internal management of defendant; that the payment of the assessments in excess of a rate of \$2.68 by plaintiff

were voluntary payments on the part of plaintiff; and that a large portion of the alleged causes of action set forth in the petition did not accrue within the six years next before the commencement of the action and are therefore barred by the statute of limitations.

235 A reply was filed. The questions for the trial court were the jurisdiction, the interpretation of the contract of insurance, the amount of assessments paid in excess of the table of rates contained in the contract, the voluntariness of the payments and the application of the statutes of limitations.

Upon motion the cause was referred to Honorable George B. Okey, to take an accounting and make report to the trial court. Upon such an accounting the referee found for the plaintiff in the sum of \$1,857.15, and the court of common pleas upon such report rendered judgment against the Hartford Life Insurance Company for the sum of \$1,857.15 with interest from the first day of September, 1919, and for costs, which judgment was affirmed by the court of appeals.

Messrs. Jones, Hoeker, Sullivan & Angert and Messrs. Arnold & Gane, for plaintiff in error.

Mr. Smith W. Bennett and Mr. Hugh M. Bennett, for defendant in error.

236 ROBINSON, J.:

The plaintiff in error seeks a reversal of the judgment of the court of appeals and the court of common pleas upon three grounds:

1. That exclusive jurisdiction over the subject-matter of these actions lies with the Connecticut courts, and the exercise of jurisdiction by the Ohio courts violates the rights of plaintiff in error under the fourteenth Amendment to the Constitution of the United States.

2. That the defendant in error voluntarily paid his assessments over a long period of years without any duress or fraud intervening, and after notice of the right claimed by plaintiff in error, and can not recover payments so voluntarily made.

3. That the claims of defendant in error are barred by the six-year limitation, under Section 11222, General Code, or by the ten-year limitation, under Section 11227, General Code.

These grounds of reversal will be considered in the order above.

The jurisdiction exercised by the trial court will be considered in the light of the relief granted rather than in the light of the relief sought in the petition, and this court will confine itself to the question whether the jurisdiction of the court extends to the limit it was exercised.

The journal entry in the court of common pleas recites: "It is, therefore, considered and decreed by the court that the plaintiff, Alonzo J. Douds, recover of the defendant, The Hartford Life Insurance Company, the sum of \$1,857.15, together with interest thereon at the rate of six per cent from the first day

of September, 1919, and his costs herein expended, including a fee of \$250 hereby allowed to the said referee, and in all taxed at \$—." That court rendered no other judgment, order or decree in the cause.

It will not be possible within the reasonable limits of this opinion to discuss all the cases cited. We will, therefore, confine this discussion to those cases exactly in point and relied upon by counsel.

The plaintiff in error relies largely upon the case of Sauerbrunn, Jr., v. Hartford Life Ins. Co., 220 N. Y., 363, decided by the court of last resort of the state of New York, and upon the case of State, ex rel. Hartford Life Ins. Co. v. Shain, Judge, decided by the supreme court of the state of Missouri and reported in volume 245, Missouri reports, at page 78, and the authorities in those cases cited.

In the Sauerbrunn case the facts covered and relief prayed for were not substantially different from the facts covered and relief prayed for in this case, and the action was disposed of by the court on a demurrer to the petition, the court there holding that "An action against a foreign life insurance company brought by a member of the company holding one of its certificates to restrain it from making an assessment against him of more than a certain amount named in his certificate and to compel it to account for moneys theretofore paid by him in excess of that amount relates to the internal affairs

of the company, which are conducted at its some office, and its method of assessment against members for the various purposes for which they are liable is governed by local laws and regulations and should be adjusted in an action brought in the home state of the company." In the discussion of the case the court assumed that an account could not be stated between Sauerbrunn and the insurance company without an exhaustive visitation and examination of the books of the company in a foreign state; and the authorities there cited, in so far as we have examined them, were based upon that theory, and upon the further theory that the court would be unable to enforce any order which it might make in the premises and therefore ought not to do a vain thing.

In the Shain case the action was one in prohibition against the trial court prohibiting it from exercising jurisdiction to enjoin a foreign insurance corporation from assessing one of its policy-holders a rate of assessment in excess of the stipulated rate, and for an accounting of such foreign corporation's business affairs; and the court there, too, assumed that an accounting would involve a visitation and examination of the books of the insurance company at its home office in a foreign state. In each case the jurisdiction of the court to render a money judgment was considered in connection with the injunctive relief sought.

If the developments of the hearing before the referee in the case at bar did not refute the assumption that a determination of the issue in this case required an exhaustive visitation and examination of the books of the company, and if the judgment in this case operated to regulate the discretion and internal management of the affairs of the company, we would feel constrained to follow the reasoning and conclusion of the courts in those cases and the authorities there cited. But in the case at bar the referee was able to ad-

did make an accounting between the plaintiff in error and the defendant in error upon the contract of insurance and the assessment calls issued to the defendant in error by the plaintiff in error, and upon the printed ratio for each such call and the rule for determining such ratio issued by the secretary of the plaintiff in error and supplied by a former general agent of the company; and but for the fact that the defendant in error had not preserved all such assessment calls, no other or further data would have been required by the referee in making the computation of the account. The defendant in error, however, having lost or destroyed a portion of the assessment calls, was obliged, as to a considerable number thereof, to supply other proof, which was done by introducing in evidence parts of the public report of the insurance commissioner of the state of Connecticut showing the data, from which together with the assessment calls it became a mere matter of mathematical calculation,

240 and the trial court, treating the action as one for an accounting and the recovery of money wrongfully obtained under color of the contract, made an accounting and rendered judgment against the plaintiff in error for the amount so found to have been demanded and paid in excess of the amount authorized by the contract. While it is true that in such computation the trial court was obliged to assume the correctness of the statements of the plaintiff in error as to the number of death claims, and the amount of insurance in force, and to make no accounting as to the earnings of the million-dollar safety fund, except as those earnings may or may not have been taken into consideration by the plaintiff in error in arriving at the ratio by it fixed, the defendant in error is not complaining of the inadequacy of the relief, and we see no prejudice therein against the plaintiff in error, for it may be assumed, in the absence of a showing to the contrary, that the plaintiff in error did not understate the number of death claims or overstate the amount of insurance in force, nor overstate the earnings of the million dollar fund, and the fact, if it be a fact, that the relief granted to the defendant in error

241 was not full and complete, is no ground for disturbing the judgment upon the complaint of the plaintiff in error.

To adopt the contention of the plaintiff in error that the enforcement of the terms of this contract between this defendant in error and this plaintiff in error in respect to the table of rates per thousand therein provided would affect thousands of other policy-holders distributed over many states, and would be an interference with the internal management of the affairs of the corporation, in that it would require the plaintiff in error to increase the assessment upon others of its policy-holders to meet its death claims, would amount to declaring that the courts of this state would not have jurisdiction to enforce payment upon a death claim, for necessarily a judgment in favor of the validity of such claim would result in an increase of the assessment upon its other policy-holders, within the limitations of their contract, by such proportion as the judgment would bear to the whole sum to be raised by such assessment. If the courts of the state of the domicile of the insured have no jurisdiction to determine the obligation of the insured as to the payment of assess-

ments levied under the contract, they would have no jurisdiction to determine the obligation of the insurer as to the payment of death benefits thereunder.

242 If we adopt the theory of the plaintiff in error that under the contract, notwithstanding the table of rates expressly made a part thereof, it may make any assessment in excess of such rate necessary to pay the death claims accruing under the safety fund department of the company, it will logically follow that the rate may be increased as the number of outstanding policies decreases until the point is reached where there is but one assessable policy outstanding, which may be assessed the full amount of the death claims then existing, and when that policy-holder dies there shall be paid from the million-dollar safety fund the amount of such policy less certain specified items of expense, and the balance of the safety fund, amounting to approximately \$999,000, will become the absolute property of the plaintiff in error, and while the disposition of the safety fund is not before this court at this time, and probably never can be before the courts of this state, yet in arriving at a construction of the contract within the jurisdiction of this court, the effect of any proposed construction concededly without its jurisdiction is a proper subject for consideration in so far as it has a bearing upon the contract within its jurisdiction.

243 To the argument that an affirmance of the judgment of the court below and the application of the construction of the contract there given to every policy-holder will result in the company being unable to make payment of the death claims as they accrue, we answer that we are concerned with and are here determining the rights of the parties hereto under the contract they entered into, and beyond that the judgment below does not go.

In holding that the plaintiff in error in making assessments is bound by the table of rates stipulated in the policy, and cannot above the age of sixty years levy an assessment at a rate in excess of \$2.68 under the contract in question, we are following the case of *Dresser v. Hartford Life Insurance Co.*, 80 Conn., 681, decided by the supreme court of the state of the domicile of the plaintiff in error.

The statutes of Ohio require any foreign insurance company, association or partnership desiring to transact business by an agent in this state to file with the superintendent of insurance a written instrument duly signed authorizing any of its agents in Ohio to acknowledge service of process therein for and in behalf of the company, consenting that service of process, mesne or final, upon any agent, shall be as valid as if served upon the company; consenting that suit may be brought against it in the county where the application for insurance was taken; if suit be brought against it after it ceases to do business in this state, and there is no agent of the company in the county in which it is brought upon whom service of process can be made, that service may be had by the sheriff sending a copy by mail. If it was not intended by the legislature to authorize suits upon the contract

foreign corporations made with citizens of the state of Ohio, and if it was not contemplated by the plaintiff in error in accepting the condition imposed by such statute, and in filing its consent to such service, to bestow upon the courts of Ohio jurisdiction to enforce for the citizens of Ohio the terms of its contracts of insurance made with Ohio citizens and to render a judgment for money due upon such contract, or wrongfully obtained under color of such contract, then the provisions of the statute in that respect operate as an aid to imposition upon the citizens of Ohio.

We are not disposed to attempt to extend the jurisdiction of the courts of the state beyond its border, but when its jurisdiction may be exercised within the borders of the state in enforcing the contracts of its citizens with foreign corporations, based upon the written contract and written data furnished, pursuant to such contract, we are of opinion that to deny such jurisdiction would be in violation of the provision of the Ohio constitution that "All courts shall be open and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." And it seems especially important in this case that the courts of Ohio should exercise such jurisdiction, in view of the fact that the supreme court of the state of Connecticut, the domicile of the plaintiff in error, in the case of *Dresser v. Hartford Life Ins. Co.*, supra, 245 in construing a contract of insurance between the plaintiff in error here and one Dresser, which contract in all essentials was like the contract here under consideration, held: "That the company could not increase the amount of the mortality calls above the amounts stated in the application for insurance made a part of the certificate," notwithstanding which decision by the highest court of the state of its domicile, rendered in 1908, prior to the levying of many of the assessments here in controversy, the plaintiff in error, in disregard of such decision, has placed upon the contract an interpretation which permits it to do the very thing that court declared it could not do. Since the plaintiff in error has so lightly regarded the judgment of the courts of its own state in this respect, its contention that it ought not to respond to the process of a court other than the courts of Connecticut does not appeal to the conscience of this court, and if adopted will be adopted because no other course can be justified under the powers conferred upon this court by the Constitution of Ohio, or because the exercise of such power will violate some provision of the Federal Constitution.

In the case of *Frick v. Hartford Life Ins. Co.*, decided by the supreme court of Iowa, 179 Iowa, 149, in an action like unto the one at bar, and upon a similar policy, that court held: "A court of equity of this state, on proper service or appearance, has, in an action by an individual policy holder, jurisdiction, not only 246 of a foreign non-mutual life insurance company, but jurisdiction: (a) to enjoin assessments on a policy of insurance in violation of the contract terms thereof; (b) to determine the amount of assessments illegally exacted (whether such determination be called an 'accounting' or not); and (c) to render personal

judgment for the amount of such illegal exaction, provided such determination involves (1) no interference with the internal management of the affairs of the company, and (2) no interference with the discretionary powers of its officers. So held where the contract amount of an assessment involved no exercise of discretion on the part of the officers, but was determinable by mathematical calculation only."

Upon the second proposition, that defendant in error voluntarily paid his assessments over a long period of years without protest, if we adopt the theory of the plaintiff in error that it was a mere conduit through which the various members of the Safety Fund Department insured each other, and that its function and liability were limited to the taking care of the safety fund, keeping account of the number of policies in force and the number and amount of death claims, and the issuing of calls for assessments and the disbursing of those assessments, clearly every dollar it received upon such assessments authorized by the contract, less the sums specified for expenses, it received in trust, and the excess payments, having been made upon an assessment call made under color of the contract, in

the absence of a showing to the contrary, will be presumed to
 247 have been made by the insured with reference to the contract and not as voluntary contributions to either the insurance company or the death benefit fund; for the fact must not be lost sight of that the ratio, and rule under which the ratio was determined, were not furnished to the defendant in error, but to an agent of the company, and there is no showing that defendant in error had knowledge of either prior to —, and such knowledge being exclusively within the company, except as it promulgated it by circular or otherwise to its agents, no presumption obtains against the defendant in error with reference thereto. If then the payments were exacted under color of the provisions of the contract and without acquainting the defendant in error with the fact that they were in excess of the assessments in the contract provided, or without acquainting him with the data from which he could ascertain that they were so in excess, and the courts below so found, we can discover no reason for disturbing the finding of the referee and the courts below that they were not voluntary payments.

Sums received, authorized by the contract, were received by the company as trustee for the payment of the proportion of death benefits owing by the defendant in error.

The sums received by the company in excess of the sums required by the contract having been exacted and received by it in violation of its duty, and under color of the trust created by the contract, equity will impress a trust upon such fund; and so long as the duties

of the trustee under the contract, to apply such assessments
 248 to the payment of death benefits according to the table of rates included in the contract, remain undischarged, the relation of trustee and cestui que trust continues, against which the statute of limitations will not begin to run until there is a repudiation by the trustee of his obligation thereunder, or knowledge is brought to the insured that such sums have not been so applied.

The trial court having found that the payments were made by the defendant in error without knowledge of the fact that they were in excess of the rate prescribed in the contract, it necessarily follows that the defendant in error could not have known that the trustee was in fact distributing such sums contrary to the provisions of the contract, and such distribution would not, therefore, amount to notice to him of the fact that the plaintiff in error had repudiated its obligation to distribute it according to the terms of the contract, and, until such notice were brought to the defendant in error, the trust would continue and subsist, and would be within the saving provision of Section 11236, General Code.

Judgment affirmed.

Johnson, Hough, Wanamaker and Matthias, JJ., concur.

249 STATE OF OHIO,
City of Columbus:

Supreme Court of the State of Ohio, of the Term of January, A. D. 1921.

I, J. L. W. Henney, Reporter of the Supreme Court of Ohio, do hereby certify that the foregoing transcript, consisting of twenty-eight (28) pages, constitutes a full, true and correct copy of the original opinion of the Supreme Court of Ohio in the case of The Hartford Life Insurance Co. v. Douds, as the same appears on file and of record in this office, as of the date of this certificate.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 21st day of December, A. D. 1921.

[Seal of the Supreme Court of the State of Ohio.]

J. L. W. HENNEY,
Reporter.

250 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Being informed that there is now pending before you a suit in which The Hartford Life Insurance Company is plaintiff in error, and Alonzo J. Douds is defendant in error, No. 16833, which suit was removed into the said Supreme Court by virtue of a writ of error to the Court of Appeals of Franklin County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause,

so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the sixth day of April, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

252 [Endorsed:] File No. 28690. Supreme Court of the United States, October Term, 1921. No. 735. Hartford Life Insurance Company vs. Frank F. Douds et al., Executors, etc. Writ of Certiorari. Supreme Court of Ohio. Filed Apr. 25, 1922. Wilbur C. Lawrence, Clerk, by Seba H. Miller, Deputy.

253

Return to Writ of Certiorari.

UNITED STATES OF AMERICA,

State of Ohio, ss:

In obedience to the command of the within writ of certiorari, and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record filed with the petition for a writ of certiorari in the case of Hartford Life Insurance Company, Plaintiff in Error, vs. Alonzo J. Douds, Defendant in Error, No. 16833, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of the State of Ohio at office in the City of Columbus, Ohio, this 25th day of April, 1922.

[Seal of the Supreme Court of the State of Ohio.]

WILBUR C. LAWRENCE,

Clerk of the Supreme Court of the State of Ohio.

By SEBA H. MILLER,

Deputy Clerk.

254

In the Supreme Court of the State of Ohio.

No. 16833.

HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

ALONZO J. DOUDS, Defendant in Error.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the certified transcript of record prepared by the Clerk of the Supreme Court of Ohio and filed with the

petition for writ of certiorari, and now on file in the office of the Clerk of the Supreme Court of the United States, shall stand as the return of said Clerk of the Supreme Court of Ohio to the writ of certiorari, without the preparation of another transcript, and to this end it shall only be necessary for said Clerk to transmit to the Clerk of the United States Supreme Court a certified copy of this stipulation as his return to the writ of certiorari.

HARRY B. ARNOLD,
JAMES C. JONES,
FRANK H. SULLIVAN,
JAMES C. JONES, JR.,
Attorneys for Plaintiff in Error.
SMITH W. BENNETT,
Attorney for Defendant in Error.

255 I, Wilbur C. Lawrence, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the above and foregoing is a full, true and complete copy of the stipulation of the parties as to return to be made to the writ of certiorari in the case of Hartford Life Insurance Company, Plaintiff in Error, vs. Alonzo J. Douds, Defendant in Error, No. 16833, as fully and completely as said stipulation remains on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the State of Ohio at my office in the City of Columbus, Ohio, this 25th day of April, 1922.

[Seal of the Supreme Court of the State of Ohio.]

WILBUR C. LAWRENCE,
Clerk of the Supreme Court of the State of Ohio,
By SEBA H. MILLER,
Deputy Clerk.

256 [Endorsed:] File No. 28,690. Supreme Court U. S., October Term, 1921. Term No. 735. Hartford Life Insurance Co., Petitioner, vs. Frank F. Douds et al., Executors, etc. Writ of certiorari and return. Filed April 29, 1922.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 271.

HARTFORD LIFE INSURANCE COMPANY, PETITIONER,

vs.

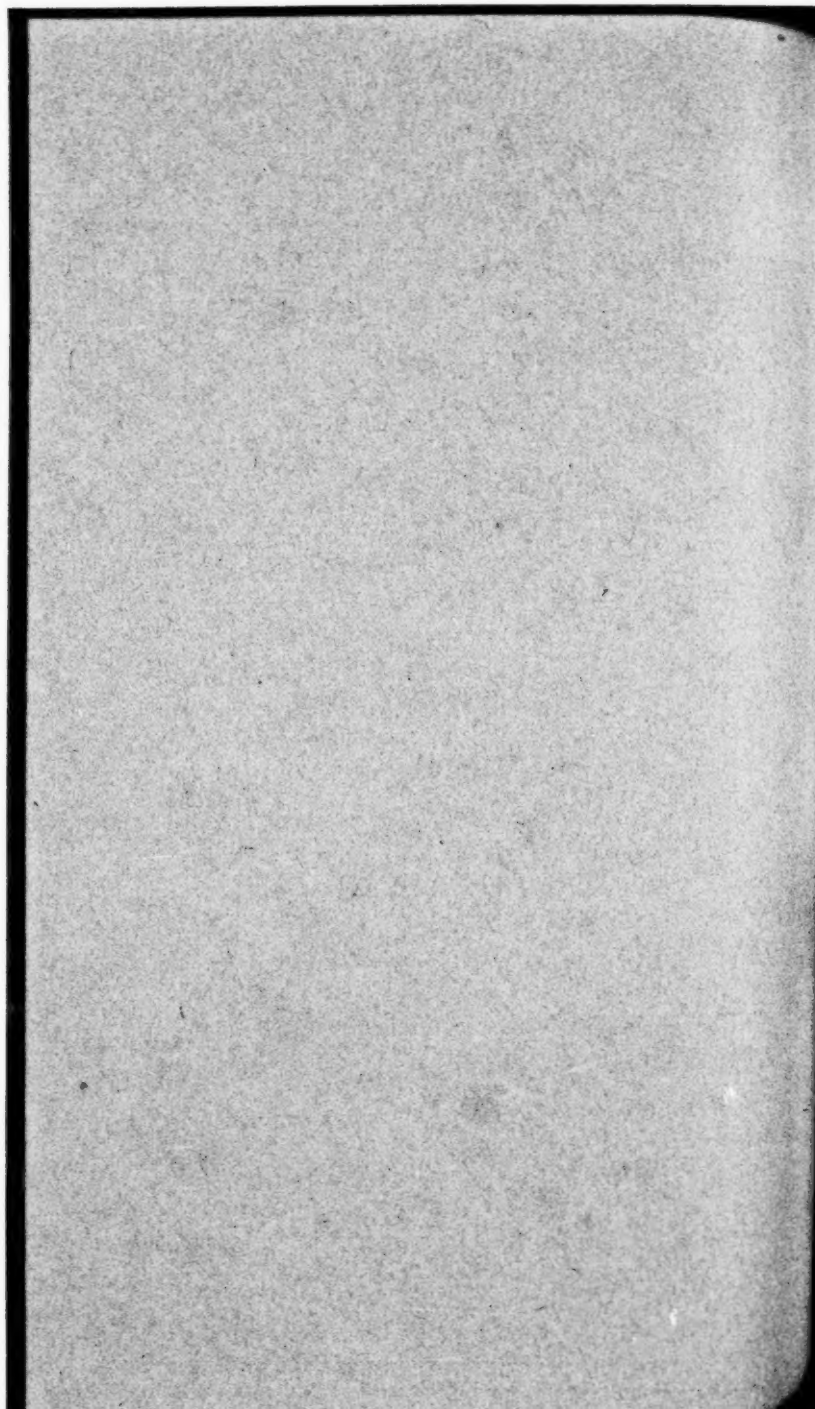
ROBERT H. LANGDALE.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OHIO.

PETITION FOR CERTIORARI FILED FEBRUARY 15, 1922.

CERTIORARI AND RETURN FILED APRIL 29, 1922.

(28,711)



(28,711)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 271.

HARTFORD LIFE INSURANCE COMPANY, PETITIONER,

vs.

ROBERT H. LANGDALE.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF OHIO.

INDEX.

| | Original. | Print. |
|--|-----------|--------|
| Proceedings in supreme court of Ohio..... | 3 | 1 |
| Motion to certify..... | 3 | 1 |
| Petition in error..... | 5 | 2 |
| Waiver of summons..... | 6 | 3 |
| Record from common pleas court of Franklin County..... | 7 | 3 |
| Transcript of docket and journal entries..... | 7 | 3 |
| Petition | 11 | 5 |
| Præcipe for summons..... | 15 | 7 |
| Exhibit A—Certificate of membership..... | 16 | 8 |
| Answer | 34 | 18 |
| Reply | 46 | 24 |
| Report of referee..... | 48 | 25 |
| Motion to vacate report of referee..... | 89 | 49 |
| Motion to confirm report of referee..... | 90 | 50 |
| Record from court of appeals of Franklin County..... | 91 | 51 |
| Transcript of docket and journal entries..... | 91 | 51 |
| Motion for new trial..... | 93 | 52 |
| Bill of exceptions..... | 95 | 53 |

| | Original. | Print. |
|--|-----------|--------|
| Stipulation as to submission..... | 95 | 53 |
| Motion for new trial..... | 97 | 54 |
| Order settling bill of exceptions..... | 99 | 55 |
| Testimony of George B. Frey..... | 104 | 58 |
| Exhibit E—Report of C. C. Hall..... | 119 | 61 |
| A—Certificate of membership..... | 148 | 85 |
| D—Special notice of quarterly call..... | 167 | 96 |
| B—Testimony of George D. Fry..... | 168 | 97 |
| A—Blank form of Hartford Life Insurance Co..... | 181 | 105 |
| B—Table of insurance statistics of Robert H. Langdale..... | 182 | 106 |
| C—Safety-fund statistics..... | 184 | 109 |
| Minute entry..... | 186 | 110 |
| Journal entry of judgment..... | 187 | 111 |
| Clerk's certificate..... | 188 | 112 |
| Reporter's certificate..... | 189 | 112 |
| Writ of certiorari and return..... | 190 | 112 |

1-3

Supreme Court of Ohio.

No. 16834.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,
vs.

ROBERT H. LANGDALE, Defendant in Error.

Motion for Order to Certify.

[Filed November 16, 1920.]

Now comes the plaintiff in error, The Hartford Life Insurance Company, and moves this honorable court for an order directing the Court of Appeals of Franklin County, Ohio, to certify to this court its record in the above entitled cause, being Cause No. 779 upon the docket of the said Court of Appeals, wherein the said Robert H. Langdale was plaintiff and the said The Hartford Life Insurance Company was defendant, on the following grounds, viz.:

- (1) The case is of public and great general interest.
- (2) Error has probably intervened.

Robert H. Langdale was a member of the Safety Fund Department of plaintiff in error, which does a life insurance business on the assessment plan, and brought this action in equity for an accounting of alleged excessive assessments paid by him to plaintiff in error between the years 1903 and 1919.

The referee appointed by the Common Pleas Court found for defendant in error in the sum of \$847.77, for which amount judgment was entered in that court.

An appeal was taken to the Court of Appeals and the case being there submitted upon evidence, that court on the eighth day of November, 1920, rendered judgment for defendant in error in the sum of \$847.77 and interest, after overruling plaintiff in error's motion for a new trial. The motion to certify is filed in this court within seventy days of the entering of said judgment by the Court of Appeals.

The jurisdictional question herein presented involves the rights of several hundred residents of Ohio, and several thousand residents of other states, members of the Safety Fund Department, and hundreds of thousands of members of other assessment associations in this and other states. This jurisdictional question has never been determined by this court, and the decision of the Court of Appeals establishes the first precedent in Ohio, which is contrary to decisions of the Supreme Courts of the United States and of Missouri and the Court of Appeals of New York in actions brought by members of the

Safety Fund Department. In view of the conflict between the decision of the Ohio nisi prius court with the decisions of the courts above mentioned, and of the importance of the question to the hundreds of thousands of members of similar associations, this court should review the case and establish the rule of law in Ohio applicable to this situation.

JONES, HOCKER, SULLIVAN &
ANGERT AND ARNOLD & GAME,
Attorneys for Plaintiff in Error.

STATE OF OHIO,
Franklin County, ss:

H. B. Arnold, being duly sworn, says he is one of the attorneys for plaintiff in error, and that the facts stated in the foregoing motion are true, as he believes.

H. B. ARNOLD.

Sworn to before me and subscribed in my presence, this 13th day of November, 1920.

[SEAL.]

A. J. WRIGHT,
Notary Public, Franklin County, Ohio.

Columbus, Ohio, November 13, 1920.

Service of the foregoing motion and its filing is hereby acknowledged.

SMITH W. BENNETT,
Attorney for Defendant in Error.

Petition in Error.

[Filed November 30, 1920.]

Plaintiff in error says that at the September Term, 1920, of the Court of Appeals of Franklin County, defendant in error recovered a judgment against plaintiff in error by the consideration of said court, in an action then pending therein, wherein plaintiff in error was defendant, and defendant in error was plaintiff, a transcript of the docket and journal entries whereof is filed herewith.

6 There is error in said record and proceedings in this to wit:

1. Said court erred in overruling the motion of plaintiff in error for a new trial.

2. Said court erred in deciding and adjudging that it had jurisdiction of the subject matter of this action, and in deciding and adjudging that the assumption and exercise by it of jurisdiction over the subject matter of this action was not and is not a violation of the constitutional rights of the plaintiff in error, and was not and is not a taking of its property and a denial to it of due process of law, under and against the provisions of the Fourteenth Amendment to the Constitution of the United States.

3. Said court erred in deciding and adjudging that the payments by defendant in error sought to be recovered herein were not voluntarily made, so as to preclude recovery by him.

4. Said court erred in deciding and adjudging that plaintiff in error was barred from recovery herein by reason of the provisions of the statute of limitations.

5. Said court erred in rendering judgment for defendant in error.

JONES, HOCKER, SULLIVAN &
ANGERT AND ARNOLD & GAME,
Attorneys for Plaintiff in Error.

Waiver.

Columbus, Ohio, November 13, 1920.

The issuance of summons in error in the above case is waived, and the appearance of defendant in error is hereby entered.

SMITH W. BENNETT,
Attorney for Defendant in Error.

In the Common Pleas Court, Franklin County, Ohio.

[No. 73527.]

ROBERT H. LANGDALE, Plaintiff,

vs.

THE HARTFORD LIFE INSURANCE COMPANY, Defendant.

Transcript of Docket and Journal Entries.

- 1916, November 13.—Petition, affidavit and precipe filed.
- 1916, November 13.—Summons issued sheriff Franklin County, Ohio; returnable November 27; answer December 16, 1916.
- 1916, November 13.—Summons issued sheriff Franklin County, Ohio; returnable November 27; answer December 16, 1916.
- 1916, December 11.—Demurrer and memorandum of defendant filed.
- 1917, April 19.—Amended demurrer filed by defendant.
- 1917, April 19.—Demurrer and amended demurrer both overruled as entry; exceptions.
- 1917, April 24.—Depositions on behalf of plaintiff filed.
- 1918, December 5.—Motion and memorandum of plaintiff filed.
- 1918, December 13.—Ordered that defendant file answer instant as entry.
- 1918, December 13.—Answer of defendant filed.
- 1919, January 4.—Ordered by court that cause be referred to Hon. George B. Okey, referee; exceptions as entry.

1919, January 10.—Reply of plaintiff filed.

1919, November 15.—Objections and exceptions of defendant; report filed and motion to vacate filed.

1919, November 28.—Bill of exceptions from Geo. B. Okey, referee, filed.

1919, November 28.—Report in referee filed.

1920, January 9.—Motion filed.

1920, March 4.—Judgment for plaintiff for \$847.77 and interest from September 1, 1919, and costs, including referee fee for \$250.00; notice of appeal, and appeal bond fixed at \$500.00 entered.

1920, March 26.—Appeal bond filed.

1917, April 19.—This day this cause came on to be heard upon the demurrer and amended demurrer of the defendant, The Hartford Life Insurance Company, to the petition of the plaintiff. The same was argued by counsel. The court upon consideration thereof, being duly advised in the premises, doth find that said demurrer and amended demurrer are not well taken, and the same are accordingly overruled. To which order and judgment of the court the defendant, by its counsel, excepted.

Said defendant has leave to plead herein by March 26, 1917.

1918, December 13.—It is hereby ordered that defendant file its answer instanter, which is forthwith done.

9 1919, January 4.—This day this cause came on to be heard upon the motion of the plaintiff for a reference of this cause to a referee to take the evidence of the parties and witnesses; to determine the questions of law and fact involved herein and to state thereon his conclusions separately and the court does find that said cause is one in which the parties are not entitled by the constitution to a trial by jury.

It is therefore by the court ordered that said cause be referred to Hon. George B. Okey, who as such referee is directed to reduce the testimony of the parties and witnesses to writing and to have the testimony thereof subscribed by each witness, unless the signature thereto is waived by the parties hereto.

Said referee further has authority to settle all questions of pleadings in said cause and to permit parties hereto to amend or supplement the pleadings herein if necessary, and that such referee make report to this court under this order without unnecessary delay.

To all of which foregoing orders of said court the defendant, The Hartford Life Insurance Company, by its counsel, protests, objects and excepts.

1920, March 4.—This day this cause coming on to be heard upon the report of Hon. George B. Okey, referee herein, and of his findings of fact and conclusions of law, and the objections and exceptions to said report filed by the defendant, The Hartford Life Insurance Company, and upon the motion of the plaintiff, Robert H. Langdale, to confirm the report of the referee and a decree thereon in conformity to said report.

10 Said cause being first heard upon the said objections and exceptions of the said defendant to said report, the same was argued by counsel, and the court being fully advised in the premises

and upon consideration of the same, doth overrule said objections and exceptions and each of the grounds thereof, to which order and judgment of the court the defendant, by its counsel, excepts.

Said cause was then heard upon the motion of the plaintiff to confirm the report of said referee herein and for a decree thereon in conformity therewith, and the same having been argued by counsel, and the court being fully advised in the premises, finds said report of said referee, in all respects, regular, and the conclusions of law of said referee, in all respects, correct, and said report is approved and confirmed.

And said referee having found and reported on taking an account between said plaintiff and defendant, that there is a balance due the said plaintiff from said defendant, for assessments paid by the plaintiff in excess of the contract rate in the sum of \$847.77, with interest thereon from the first day of September, 1919.

It is, therefore, considered and decreed by the court that the plaintiff, Robert H. Langdale, recover of the defendant, The Hartford Life Insurance Company, the sum of \$847.77, together with interest thereon at the rate of six per cent from the first day of September, 1919, and his costs herein expended, including a fee of \$250.00 hereby allowed to the said referee, and in all taxed at \$—, to which order and decree the said defendant, The Hartford Life Insurance Company, by its counsel, excepts.

11 The said defendant having given notice of its intention to appeal said cause to the Court of Appeals, Franklin County, Ohio, it is by the court ordered that the amount of such appeal bond be \$500, with surety to the approval of the court of this county.

[Duly certified.]

Petition.

[Filed November 13, 1916.]

The plaintiff, Robert H. Langdale, says:

That on the first day of May, 1886, The Hartford Accident Insurance Company was duly incorporated a corporation under the act of the general assembly of the state of Connecticut, and accepted and adopted the terms, powers and limitations of a charter as defined in said act of the general assembly of the state of Connecticut and duly organized thereunder as such corporation with the powers and limitations therein enumerated and contained.

That thereafter by amendment to its charter, said Hartford Accident Insurance Company, being authorized so to do by act of the general assembly of the state of Connecticut, dated May 22, 1867, duly changed its name to The Hartford Life and Accident Insurance Company, and subject to the powers and limitations as contained in said act, amended its said charter.

That thereafter, by amendment to its said charter, said The Hartford Life and Accident Insurance Company, being authorized so to do by the act of the general assembly of the state of Connecticut,

12 dated July 17, 1868, duly changed its name to The Hartford Life and Annuity Insurance Company, and subject to the powers and limitations as contained in said act, amended its said charter.

That thereafter, by amendment to its said charter, said The Hartford Life and Annuity Insurance Company, being authorized so to do by act of the general assembly of the state of Connecticut, dated the third day of March, 1897, duly changed its name to The Hartford Life Insurance Company, subject to the powers and limitations contained in said act, amended its said charter, and which said last described act of the general assembly of the state of Connecticut duly provided as follows:

"Section I. That the corporate name of The Hartford Life and Annuity Insurance Company, a corporation located and doing a life insurance business in Hartford, in the state of Connecticut, be and the same is hereby changed to The Hartford Life Insurance Company, by which name it shall be hereafter known and called.

"Section II. All contracts, rights, obligations, property, privileges and franchises of the said The Hartford Life and Annuity Insurance Company shall be and remain unimpaired and vested in the corporation under its new name."

That the said defendant, The Hartford Life Insurance Company, is engaged in carrying on its said business within the state of Ohio, and was so engaged at the several times hereinafter set forth.

That its cause of action against the said defendant, the plaintiff Robert H. Langdale, says:

13 That on the fourth day of May, 1882, in consideration of the representations, agreements and warranties, made an application for the insurance hereinafter described, and of an admission fee paid, and of the sum of ten dollars to be paid the said defendant, The Hartford Life Insurance Company, and by The Hartford Life Insurance Company depositing with a certain trustee to create a Safety Fund as herein described, and of three dollars per annum for expense and the further payment in accordance with the conditions of a certain certificate of insurance, then issued and delivered to the said plaintiff, Robert H. Langdale, insured the life of the said Robert H. Langdale, in the sum of three thousand dollars (\$3,000.00). That said certificate of insurance provided that said amount of three thousand dollars, upon the death of said Robert H. Langdale, the plaintiff herein, should be paid to Harriet Langdale, his wife, within ninety days after the receipt of proof of death of the said Robert H. Langdale.

A copy of said certificate of insurance, being of the same tenor and effect, is attached hereto and marked Exhibit "A."

Plaintiff further says that he duly kept and performed all the terms and conditions of said contract of insurance, as represented by said certificate of insurance, from the date of the issue of said certificate of insurance until February 26, 1914, at which time, by reason of the excessive assessments charged against him, the said plaintiff

tiff, for the alleged maintenance in force of said insurance, he was at said time compelled to yield up and cease to carry and maintain said certificate of insurance in said defendant company, and that at the time of the payment of the last assessment thereon, February 14 26, 1914, said defendant company then had of the moneys of said plaintiff, which it had collected in manner and form as hereinafter set forth, and which it held in trust for the said plaintiff, the sum of about eight hundred fifty dollars (\$850.00). That said plaintiff reached the age of 60 years on August 4, 1901. Thereafter, in violation of the terms of said certificate, he was compelled to pay assessments, until he ceased paying same, at the rate of four dollars per assessment on each one thousand of insurance in force.

That said plaintiff, by reason of the excessive assessments so levied against him upon said certificates of insurance, was compelled to and did cease paying upon said certificates of insurance, at said rate, at the age of 74 years, to wit: on the 25th day of February, 1914.

That each and all of said payments so made by him in advance of two dollars and sixty-eight cents per payment on each thousand dollars of said insurance, so issued by the said defendant company, is held by the said defendant company in trust for this said plaintiff pursuant to the terms of said certificate and each and every part thereof. Plaintiff says that each and all of said payments made by him after he arrived at the age of 60 years was made and paid in ignorance of his legal rights and under mistake of law, and that said amount of excessive payments, of which amount plaintiff is not advised but is about eight hundred and fifty dollars, is held in trust by said defendant company for this plaintiff.

Wherefore, plaintiff prays that an account may be taken of the amounts so paid to the defendant and held by the defendant in trust for this plaintiff, and that upon the determination of such amount that the same may be by decree of this court decreed to the plaintiff, and for such other and further relief in favor of said plaintiff and against said defendant as the justice and equity of the case may require.

SMITH W. BENNETT,
HUGH M. BENNETT,
Attorneys for Plaintiff.

[Duly verified.]

Precipe for Summons.

To the Clerk of said Court:

Issue summons herein to the sheriff of Franklin County, Ohio, for the defendant, The Hartford Life Insurance Company; direct the service of the same to be made upon the defendant company pursuant to the provisions of section- 9381 and 9382 of the General Code of Ohio. Such service to be made upon John Blankpied, Grant Avenue, Columbus, Ohio, the agent last designated and acting for the defendant company in county of Franklin, state of Ohio. Also direct the said sheriff to send a copy of the summons, with all endorse-

ments thereon, by mail to the address of the defendant company at the city of Hartford, in the state of Connecticut, that being its principal or home office, and have him make his return accordingly. Endorse the same "Accounting and equitable relief demanded."

Columbus, O., Nov. 13, 1916.

SMITH W. BENNETT,
Attorney for Plaintiff.

16

"EXHIBIT A."

Certificate of Membership.

Benefit Not to Exceed \$3,000.

No. 30031.

Safety Fund Department.

Age 40.

The

Hartford Life and Annuity Ins. Co.
of Hartford, Connecticut,

In consideration of the representations, agreements and warranties made in the application herefor, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, on each \$1,000 of the maximum indemnity herein provided for to create a Safety Fund, as hereinafter described, and of Three Dollars per annum on each \$1,000, for expenses, to be paid as hereinafter conditioned and of the further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Robert H. Langdale of Terrace Park, county of Hamilton, state of Ohio, with the following agreements:

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed, five years prior to the date of

17 any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership.

or, shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said In-

18 surance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that so long as any Certificate of Membership in the Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required, together with any balance due said Company) to

19 his legal representatives within ninety days after the receipt of such proofs, upon presentation and surrender of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

1. Application Made Part of Contract.—The application on the faith of which this Certificate issues is hereby referred to and made part of this contract.

2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for expenses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by monthly or other pro rata installments of the same in advance for periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assessment in accordance with the Table of Graduated Assessment Rates, as printed hereon, within thirty days from day on which notice bears date. And further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement

20 with the Trustees aforesaid, a copy of which is printed hereon and hereby made a part of this contract; all such payments to be made direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission: And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if either the monthly dues, assessments or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustees of the Safety Fund; and that if a legal and just claim to benefit, under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, or before January 1, 1885, and the sum collected on the assessment to be made in such event shall be paid over, as hereinbefore stipulated; or such claim shall arise after said Fund shall have accumulated to said amount or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said Safety Fund, as hereinbefore provided, shall be made by the

21 Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund on account of this Certificate, shall cease.

4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, or delivered by an agent of the Company, shall be deemed a legal

and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary, showing such facts, shall be taken and accepted as conclusive evidence of the mailing of such notice, and of the facts aforesaid, as set forth in such transcript.

5. Change of Residence or Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining under ground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delirium tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—or while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, misrepresentation, or false statement or statement not true made in the application on which this Certificate issues; or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of

any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. And that in case any County, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company on account of any moneys collected hereon, said member agrees to pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to hold this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

11. Powers of Agents.—Agents of the Company can not alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive money or assessments, dues, or Safety Fund deposits maturing and payable after the issue of this Certificate.

In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 4th day of May, one thousand eight hundred and eighty-two.

(Signed)

[SEAL.]

T. R. FOSTER,
President.

(Signed) W. A. COWLES,
Ass. Secretary.

(Agents of the Company are not authorized to make any indorsements on this certificate.)

Trustee's Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to-wit:

"That said Company will deposit said sum of ten dollars, when" received, with the Trustee, named in a contract made with it (of" which a copy is printed hereon), as a Safety Fund in trust for" the uses and purposes expressed in said contract; and shall at" the expiration of five years from July 1, 1879, if said Safety Fund" shall then amount to three hundred thousand dollars, or whenever" thereafter said sum shall be attained, make a semi-annual dis-" tribution of the net interest received therefrom by it, pro rata" among all the holders of Certificates in force in said department at" such times, who shall have contributed five years prior to" the date of any such division their stipulated proportion" of said Fund, by applying the same to the payment of" their future dues and assessments; and that, whenever said Fund" shall amount to one million dollars all subsequent receipts there-" for shall be distributed by the said Company in like manner as" the interest."

"Said Company further agrees that if at any time, after said" Fund shall have amounted to three hundred thousand dollars, or" after five years from January 1, 1880, if that amount shall not" have been attained before that date, it shall fail by reason of in-" sufficient membership, or, shall neglect if and legally due, to pay" the maximum indemnity provided for by the terms of any Cer-" tificates issued in said department, and such Certificate shall be" presented for payment to said Trustee by the legal holder thereof," accompanied by satisfactory evidence, as hereinafter provided, of" its failure to pay, after demand upon it within the time herein" stipulated for limitation of action, then it shall be the duty of said" Trustee to at once convert said Safety Fund into money and dis-" tribute the same (less the reasonable charges and expenses for the" management and control of said Fund) among all the holders of" Certificates then in force in said department, or their legal repre-" sentatives, in the proportion which the amount of each of their" Certificates shall bear to the amount of the whole number of such"

"Certificates in force; and that in such event it shall file with said"
 "Trustee a correct list, under oath, of the names, residences and"
 "amounts of the Certificates of all members entitled to par-"
 27 "ticipate in such division. The evidence referred to above"
 "to be either certification by said Insurance Company's"
 "President or Secretary that a claim is justly and legally due and"
 "that payment thereof has been demanded and refused, or the"
 "duly attested copy of a final judgment obtained thereupon in any"
 "court of competent jurisdiction, satisfaction of which has been"
 "neglected or refused for a period of sixty days from this date."
 "And said Company further agrees that so long as any Certificate"
 "of membership in its Safety Fund Department shall remain in"
 "force, said Fund shall be in no wise chargeable or liable for any use"
 "or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders, as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the moneys
 28 come, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of all interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, at

addresses, numbers and amounts of Certificates of all persons thus entitled.

That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States

29 Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the

Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall

occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1,

1879, or until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities pur-

chased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the

further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for

the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal

of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole

Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned

in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore

recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall

have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information re-

quired for the making of a proper distribution thereof as agreed with its Certificate holders.

30 All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect

of the party of the first part; and all payments required herein to be made to the Certificate holders by the party of the second part to be

made at the office of said Trustee or of the successor in said trust. The necessary expenses connected with the management of said

Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore men-

tioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said

Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in

and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount

of time and labor involved in the execution thereof. It is hereby mutually understood and agreed by both parties

hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses

and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that

all Certificates of membership issued by the party of the first part in

its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purpose of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In witness whereof, the party of the first part has affixed hereunto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,
By E. H. CROSBY,
President, and
STEPHEN BALL,
Secretary.

[SEAL.]

SECURITY COMPANY,
By ROBERT E. DAY, *President, and*
WILLIAM L. MATSON, *Treasurer.*

32 *Table of Graduated Assessment Rates for Death Losses for Every \$1,000 of a Total Indemnity of \$1,000,000.*

| | Age. | Rate. | Age. | Rate. | Age. | Rate. |
|-------|--------|--------|--------|--------|--------|--------|
| 15 to | 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.33 |
| | 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| | 23.... | .69 | 37.... | 1.03 | 50.... | 1.45 |
| | 24.... | .71 | 38.... | 1.06 | 51.... | 1.50 |
| | 25.... | .73 | 39.... | 1.09 | 52.... | 1.55 |
| | 26.... | .75 | 40.... | 1.12 | 53.... | 1.60 |
| | 27.... | .77 | 41.... | 1.14 | 54.... | 1.65 |
| | 28.... | .79 | 42.... | 1.16 | 55.... | 1.70 |
| | 29.... | .81 | 43.... | 1.18 | 56.... | 1.75 |
| | 30.... | .83 | 44.... | 1.20 | 57.... | 1.80 |
| | 31.... | .85 | 45.... | 1.22 | 58.... | 1.85 |
| | 32.... | .88 | 46.... | 1.25 | 59.... | 1.90 |
| | 33.... | .91 | 47.... | 1.30 | 60.... | 1.95 |
| | 34.... | .94 | | | | |

These rates decrease in proportion as the total indemnity in force increases above one millian dollars in amount, and are calculated so as to cover the usual expense for collecting.

Received of The Hartford Life and Annuity Insurance Company, of Hartford, Conn., — in full for all claims under this Certificate, No. —, on the life of — — —, deceased.

_____,
Beneficiary.

_____,
Beneficiary.

Witness:
_____.

(Back of Policy.)

This Company has no agents authorized to receive money on Assessments, Dues, or Safety Fund.

33

No. 34501.

Safety Fund Department.

Certificate of Membership.

Benefit Not to Exceed \$3,000.

Issued by The

Hartford Life and Annuity Insurance Co.,

Hartford, Conn.

Name, Robert H. Langdale.

Agent, B. F. Coon.

Read carefully all the conditions of this certificate.

No person should be a party to a contract without knowing all its conditions.

After an Agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

Always give number of this certificate in writing to home office.

Know all men by these Presents, That the undersigned beneficiary— named in the within Certificate, issued to — — — in consideration of — have sold, assigned and conveyed to — — — of — — — County of — — —, State of — — —, and to his heirs and assigns forever, all — right, title, and interest in the within Certificate of Membership, subject to the terms and conditions thereof.

I hereby constitute the said assignee or assignees its attorney, in my name, but to h— own use, to take all legal measures
 34 which may be proper to keep in force said Certificate and finally collect all amounts due and to become due thereunder with power of substitution.

Witness my hand and seal this — day of —, 18—.

— — —. [SEAL.]

If more than one beneficiary, they can sign below.

Answer.

[Filed December 13, 1918.]

Defendant has at all times herein protested against and objected to the jurisdiction of this court over it and the subject matter of this cause, and, having appeared solely for the purpose and without waiving the jurisdiction or entering an appearance herein, filed a demurrer and an amended demurrer to the jurisdiction of this court on the grounds set forth in said demurrers, and said demurrers having been overruled over its objection and exception, and the court having ordered the defendant to plead herein, defendant, renewing its protest against and objection to the jurisdiction of the court over it and the subject matter of this action herein, files this its answer to the petition, being forced thereto by the overruling of such protest and objection and by the order of the court herein, which is by this defendant claimed to be erroneous and in violation of its rights under the law of the land and of the provisions of the Constitution of the United States and of the amendments thereto.

Defendant is a foreign corporation organized and existing under the laws of the state of Connecticut; its officers reside in and
 35 conduct the business of said company in the state of Connecticut; its office, books, papers and records are all in the state of Connecticut; that it has no offices in the state of Ohio; that the remedy of an accounting and money judgment sought in this proceeding is outside and beyond the jurisdiction of this court; that this court is without the power to enforce the remedy sought by the plaintiff in this proceeding, and that such remedy is wholly and entirely within the jurisdiction of the court of Connecticut, to which application should be made for the relief herein prayed for, all for the reasons herein fully set forth.

Defendant says that in and by the petition herein plaintiff charges and avers that the defendant has assessed the plaintiff in a sum in excess of that provided by the terms of the contract or certificate of membership or policy of insurance referred to in said petition, in this: that the assessment rate provided for by said certificate of policy of insurance, on and after the plaintiff reached the age of sixty (60) years, was two dollars and sixty-eight (\$2.68) per assessment for each one thousand dollars (\$1,000) of insurance; that defendant has assessed plaintiff in excess of said rate of two dollars and sixty-eight cents (\$2.68) per assessment for each one thousand and

lars (\$1,000) of insurance, after he reached the age of sixty (60) years; that the amount of the excessive assessments paid by the plaintiff after he reached the age of sixty (60) years is to him unknown, but that the same with interest, is about eight hundred and fifty dollars (\$850.00), and plaintiff prays the court that an accounting be taken and ordered so as to ascertain the amount of such excess in each of the said several assessments levied by the defendant against the plaintiff since the fourth day of August, 1901, when the plaintiff reached the age of sixty (60) years.

Defendant further says that at the time the alleged policy of insurance or certificate of membership was entered into between the parties hereto, the defendant was conducting and operating a department of life insurance upon the mutual or assessment plan, known as the Safety Fund Department, in which said department and under which plan of insurance the certificate or policy of insurance sued on herein was issued, and that the corporate name of the defendant at the time said certificate or policy of insurance was issued was The Hartford Life and Annuity Insurance Company; that subsequently defendant changed its name to Hartford Life Insurance Company, and at all times herein stated has continued to operate and conduct its Safety Fund Department, in which it does the business of life insurance, upon the assessment or mutual plan, as aforesaid, of which department plaintiff was a member and held said certificate or policy sued on herein.

Defendant further says that the assessments referred to in plaintiff's petition were levied quarterly, and since the fourth day of August, 1901, more than fifty (50) assessments have been levied against the plaintiff on said certificate or policy of insurance, and that the inquiry and accounting sought to be had by the petition involves, therefore, an inquiry into each of the said several assessments so levied on said certificate or policy of insurance.

Defendant further says that, by the terms of said policy or certificate sued on herein, it is expressly provided that "the rates decrease in proportion as the total indemnity in force increases above one million dollars;" which is to say, the assessment rate provided for in said certificate is the rate of assessment at each thousand dollars (\$1,000), upon the basis of one million dollars (\$1,000,000) of outstanding insurance or indemnity in force at the time of the levy of each of said assessments, and that if the total indemnity or insurance in force at the time of the levy of such assessment exceeds the sum of one million dollars (\$1,000,000), the rate of assessment is to be proportionately decreased, and that where there is more than one death loss of one thousand dollars (\$1,000) to be assessed for at the time of the levy of such assessment, the rate and the amount of such assessment or assessments is accordingly increased by the number, per one thousand dollars (\$1,000) of such death losses, and that it is so provided by said certificate or policy of insurance.

Defendant further says that at the time of each of the assessments complained of in the petition herein, the indemnity or insurance in

force was largely in excess of one million dollars (\$1,000,000) and varied in amount at the time of each assessment; that at each assessment there was in excess of one death loss of one thousand dollars (\$1,000) to be assessed for; that the number of deaths so to
38 be assessed for at the time of such assessments varied and at times such death losses exceeded the sum of sixty thousand dollars (\$60,000); so an inquiry as to the proper rate of assessment on said policy or certificate of insurance involved and required the ascertainment of the total amount of insurance or indemnity in force at the time each assessment was levied, as well as the number of deaths for which each assessment was levied.

Defendant further says that in the petition herein the plaintiff asks and prays that the court shall require defendant to account to plaintiff for that proportion or amount of the assessments paid by the plaintiff under said certificate which are averred to be in excess of the rate of "\$2.68 per assessment per thousand dollars of insurance in force under said certificate of insurance," regardless of the amount of indemnity in force or the number of deaths at the time when said assessments were levied, and to recover judgment against defendant for the difference between the assessments actually levied and the amount of assessments so to be ascertained.

Defendant further says that the remedy of accounting and of a money judgment based upon such accounting as is prayed for by the plaintiff would require a complete and exhaustive visitation of the affairs of the defendant at its home office in Hartford, Connecticut, and an examination of all of the books and records for many years past, that is to say, from 1901 to 1914, and would amount to an interference with the internal management of the defendant, a foreign corporation, contrary to and in excess of the powers of this
39 court under such circumstances; that such inquiry and accounting would involve a computation of a long, intricate and involved account based upon data which exists in and can only be ascertained from the books and records of the defendant, located in the state of Connecticut; and can only be properly taken by a commissioner appointed by the courts of a state having full jurisdiction of the defendant and of its officers; and, while this court may have jurisdiction to decree an accounting under some conditions, it is beyond the jurisdiction and power of this court to decree such an accounting against defendant, a non-resident corporation; that such remedy, if it exists and is enforced on behalf of plaintiff in this state, exists with respect to every other member holding similar certificates or policies of the Safety Fund Department of the defendant, and the defendant says that it has many thousands of members and certificate holders in the Safety Fund Department located throughout the different states of the United States, each of whom holds a certificate similar to that held by plaintiff; that said members aggregate some fifty thousand (50,000) in number; that the ascertainment of the excess, if any, charged against the plaintiff on each of said several assessments involves, likewise, the ascertainment of the alleged excess charged against each and every other member of the Safety Fund Department of the defendant, as all of

said members of said Safety Fund Department were assessed on the same basis, plan and table of rates as the plaintiff herein; that no intelligent or just judgment as to the amount of the claimed excess could be ascertained without entering into an elaborate accounting, involving the ascertainment of the proper assessment to be made against each and every other member of the Safety Fund Department of the defendant, and that if the remedy sought by the plaintiff were granted, similar or like remedies might be demanded by each of said several members in each of the several states of the United States, which would amount, in effect, to an extermination of the business of the defendant.

Defendant says that if this court proceeds with this cause and entertains jurisdiction hereof and grants the relief prayed for by plaintiff, it will greatly embarrass and obstruct defendant in the prosecution of its business, so that any appeal from any judgment or decree in this cause granting such relief would be wholly inadequate to preserve and protect the rights of defendant and members of the Safety Fund Department; and that if this court shall proceed and determine the issues made by the petition and shall thereby undertake to review the propriety of past acts of the defendant touching the levy of assessments under said certificate and shall attempt, by the decree of this court to fix and adjudge what this court shall conceive to be the proper amount to be charged by defendant against the plaintiff as assessments under said certificate, that defendant would be greatly embarrassed and obstructed in the discharge of its obligations to the members of the Safety Fund Department, and in the orderly prosecution of its business, and all this without jurisdiction or power to make, grant or enforce said remedy.

Defendant says that the courts of Connecticut, in which defendant is domiciled, have the sole and exclusive jurisdiction and power to entertain a suit having for its object and purpose the determination of what constitutes a valid and proper assessment under certificates issued by the Safety Fund Department of the defendant and the granting of the relief prayed for by the plaintiff herein; that if the courts of Connecticut should by their decrees and judgments, determine that the proper amount of the assessments which should be levied by the defendant against the members of its Safety Fund Department is different from the amount of the assessments which this court may, by its decree or judgment, decide to be the correct or proper amount, then defendant will be subject to conflicting decrees of different courts on the same subject matter, thereby giving rise to unseemly conflict between the courts of this state and the courts of Connecticut; that any change which this court should decree to be made in the manner or method or the amount of defendant's assessments levied on the certificate in suit, would disturb and disarrange, pending any appeal from this court, the relations, obligations, and duties between the defendant and the whole body of its members of the Safety Fund Department; that no decree could or can be entered by this court which would not amount to a most complete attempt to regulate defendant's internal affairs and to review the propriety of defendant's dealings in the past and

future with the members of its Safety Fund Department; that defendant has no officers within the State of Ohio upon whom any writ or similar orders which might be issued by this court could or can

be served; that defendant has no property in the State of
42 Ohio; that unless this court desists from making further orders and decrees in this cause and from entertaining jurisdiction herein, defendant will be required to either suffer a judgment by default to be taken against it in this cause or offer evidence herein and at great expense support this answer by proofs upon the hearing of this cause and to go to trial on the merits thereof, and thereby defendant and its transactions and internal affairs would be subject to the visitation, regulation, and control of this court; and that, in order to meet by proof the issues so raised by the petition, it would be necessary to examine all of the accounts between defendant and all of its members of the Safety Fund Department, of whom there are a great number throughout the states of the United States, from the time plaintiff alleges he has been excessively charged or assessed, to wit, from the fourth day of August, 1901, up to the present time. Defendant says that in order for it to comply with such an order or decree of accounting it would become necessary for defendant to bring before this court its books, papers and records touching the matter in controversy, at a great disturbance and destruction of the orderly and proper transaction of its business; that in order to make the showing demanded of the defendant by the plaintiff in said petition it will be necessary for defendant to take its officers and employes away from their usual and ordinary duties in the home office of defendant in the state of Connecticut and to require them to devote much of their time for weeks to the proper presentation and preparation of its defense herein; that it will be

43 become necessary for the officers and employes of the defendant, in order to make a proper defense herein, to leave their duties at the home office of the company, travel to the State of Ohio, and remain in attendance upon said court for an indefinite time, at the great hardship and oppression of the defendant.

Defendant further says that the remedy of an accounting sought by the plaintiff, is, in substance and effect, an effort to have the court regulate and control the conduct of the internal affairs of defendant at its domicile in the state of Connecticut, and is, therefore, beyond the jurisdiction of this court; that the granting of said relief by this court would be without due process of law, and would deprive defendant of its property without due process of law, contrary to and in violation of Section One of the Fourteenth Amendment to the Constitution of the United States; that a decree or judgment entered in said cause adjudging the return to the plaintiff of portions of assessments previously made by defendant upon plaintiff as a member and certificate holder in the Safety Fund Department, as prayed in the petition, would likewise be a regulation of the conduct and internal affairs of the defendant at its domicile in the state of Connecticut, and the granting of said relief would deprive defendant of its property without due process of law, contrary to and in vio

lation of the Fourteenth Amendment to the Constitution of the United States.

Defendant further alleges that all of the assessments complained of by the plaintiff herein were levied for the purpose of paying the death losses insured by the deaths of members holding similar certificates in said department of the defendant company, and the proceeds of said assessments have been applied in the payment of death losses.

Still protesting against and objecting to the jurisdiction of the court in this cause, and answering herein because of the orders of the court herein, which defendant alleges are erroneous and in violation of defendant's rights as aforesaid, defendant admits that it is a corporation duly created and existing under the laws of the state of Connecticut, formerly under the name of the Hartford Accident Insurance Company; that thereafter its name was duly changed to The Hartford Life and Accident Insurance Company, and thereafter its name was again changed to the Hartford Life and Annuity Insurance Company, and its name was thereafter again changed to the Hartford Life Insurance Company; that it was formerly licensed to do and engage in carrying on its business in the State of Ohio; that on or about the fourth day of May, 1882, for the consideration stated therein, it issued and delivered to the plaintiff one (1) certain benefit certificates in its Safety Fund Department in the sum of three thousand dollars (\$3,000), payable upon the death of the plaintiff, as provided in said certificate, a copy of which said certificate is attached to the petition and marked "Exhibit A;" that upon the back of said certificate were printed certain tables of graduated assessment rates; that the plaintiff paid the assessments made and levied against him by defendant under said certificate, but defendant denies that the assessments made and levied against the plaintiff under such certificate were not in accordance and in compliance with the terms of said certificate, and denies that plaintiff was assessed in excess of the amount that was leviable by the said certificate or by the rates provided for in and on such certificate.

Defendant denies each and every fact, statement and allegation in the petition not herein admitted.

Defendant further alleges that the assessments so paid and complained of by the plaintiff herein under said certificate were voluntary payments on the part of the plaintiff.

Defendant further says that plaintiff had, during the period from the fourth day of August, 1901, up to and until the time when the certificate held by the plaintiff lapsed and became void by reason of his failure to pay the assessments properly made thereunder, and up to the filing of this action, knowledge and the means of knowledge of his rights, duties and obligations under said certificate of membership, and, with knowledge and the means of knowledge, of all the facts, voluntarily and without coercion, improper influence, or protest, paid each of the several assessments made and levied by defendant upon the certificates so held by plaintiff, in the aggregate number of approximately fifty (which amounts so collected being disbursed to the beneficiaries under other certificates matured by

death), and is now estopped to deny the validity or propriety of said assessments; that the larger portion of the alleged cause of action set forth in the petition did not accrue within six years next before the commencement of this action, and is therefore barred by the statute of limitations in such cases made and provided.

Wherefore, defendant prays that its protest and objection heretofore and now made herein against and to the jurisdiction of this court over it and the subject matter of this action herein shall be sustained; that its rights under the laws and Constitution of the United States and amendments thereto shall be maintained and protected and that this court shall hold it is without jurisdiction over the defendant and the subject matter of this action.

JONES, HOCKER, SULLIVAN &
ANGERT AND
ARNOLD & GAME,

Attorneys for Defendant.

[Duly verified.]

Reply of Plaintiff.

[Filed January 10, 1919.]

Now comes the plaintiff and for his first reply to the answer of the defendant or in so far as he is informed it is necessary to reply thereto, says:

1. He admits defendant is a foreign corporation organized and existing under the laws of the state of Connecticut.

2. He admits that in his petition he charges and avers that said defendant, The Hartford Life Insurance Company, has assessed said plaintiff in a sum in excess of that provided by the terms of the contracts or certificates of membership issued to plaintiff by defendant company.

3. He admits that at the time the certificates of membership were entered into between the parties hereto, the defendant was conducting and operating a department of its life insurance known as the Safety Fund Department, and that said certificates were issued in said department.

4. He admits that said assessments were levied quarterly on said certificates of insurance.

5. He admits that in the petition herein the plaintiff asks and prays that the court perpetually enjoin the defendant from levying assessments against him in excess of two dollars and sixty-eight cents per assessment per one thousand dollars of insurance in force under said certificate of insurance. And with the exception of that which is herein admitted plaintiff denies each and every other allegation in defendant's answer contained, save and except those allegations contained therein which are admissions of allegations and statements contained in plaintiff's petition.

Second. Plaintiff, for his second reply to defendant's answer, says that in an action heretofore pending in the Supreme Court of the State of Connecticut, entitled *Dresser vs. The Hartford Life Insurance Company*, found in the 80th Connecticut Supreme Court Report, at page 681, in which this defendant was there a defendant, and in which case the same form of policy or certificate of insurance as is set forth in plaintiff's petition was then directly involved, the following language quoted by the defendant in its answer from the certificate of insurance held by the plaintiff, to wit: "The rates decrease in proportion as the total indemnity in force increases above one million dollars," was construed by said court to mean that the rates will decrease as the total amount of indemnity increases and that there is no suggestion that they can ever be increased

48 and it was held, determined and adjudged by said court that they, the rates, cannot increase.

Plaintiff says that the determination, order and judgment of said court is still in full force and effect, unreversed and unmodified, and that by reason thereof the construction given by said court to said certificate of insurance is binding upon said defendant and is res judicata of the claims made by said defendant to the contrary, in its said answer.

[Duly verified.]

SMITH W. BENNETT.

Report of Referee, George B. Okey.

[Filed November 28, 1919.]

Upon motion of the plaintiff for a reference of the cause to take the evidence of the parties and witnesses, to determine the questions of law and fact involved herein and to state thereon his conclusions separately, the court, finding that the cause is one in which the parties are not entitled by the Constitution to a trial by a jury, ordered

"that said cause be referred to Honorable George B. Okey, who as such referee, is directed to reduce the testimony of the parties and witnesses to writing and to have the testimony thereof subscribed by each witness, unless the signature thereto is waived by the parties hereto.

Said referee further has authority to settle all questions of pleadings in said cause and to permit parties hereto to amend or supplement the pleadings herein if necessary, and that said referee make report to this court under this order without delay."

49 The undersigned, assuming that the court intended by its order to confer upon him the general powers of a referee under the Code of Civil Procedure, having taken the required oath, proceeded, at the convenience of the parties, to take the testimony offered, and upon the conclusion thereof, to hear and to consider arguments and briefs of the respective counsel.

The plaintiff in the action seeks to compel the defendant to account for certain payments claimed to have been made by him to it in excess of those contemplated in a membership certificate in the Safety Fund Department of the defendant company, in the sum of \$3,000, issued to him on the 4th day of May, 1882.

The demurrer and the amended demurrer of the defendant to the petition, challenging the jurisdiction of the court over it and the subject matter of the cause, having been overruled, the defendant, in its answer, again specifically challenges such jurisdiction, and alleges that the granting of the relief prayed for by the plaintiff would deprive it of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States.

It further alleges that all of the assessments complained of by the plaintiff were levied for the purpose of paying the death losses incurred by the death of members holding certificates similar to those of the plaintiff in the Safety Fund Department of the defendant company, and that the proceeds of said assessments have been applied to the payments of death losses.

50 The defendant further alleges that the plaintiff voluntarily and without coercion, improper influence or protest, paid each of the several assessments made and levied upon the certificate held by the plaintiff, and is now estopped to deny the validity or propriety thereof; and further alleges that the larger portion of the alleged cause of action did not accrue within six years next before the commencement of the action, and is therefore barred by the statute of limitations.

Findings of Fact.

Your referee, from the evidence adduced before him, finds and concludes the facts to be as follows:

The defendant company was created by act of the General Assembly of the State of Connecticut, originally under the name of The Hartford Accident Insurance Company. Under authority of successive legislative acts, it changed its name first to that of The Hartford Life and Accident Insurance Company, later to that of The Hartford Life and Annuity Insurance Company and finally to that of The Hartford Life Insurance Company.

On or about the 4th day of May, 1882, the defendant company issued to the plaintiff a certificate of membership in its Safety Fund Department, for the sum of \$3,000. The following is a copy of one of said certificates:

51

Certificate of Membership.

Benefit Not to Exceed \$3,000.

No. 30031.

Safety Fund Department.

Age. 40.

The

Hartford Life and Annuity Ins. Co.
of Hartford, Connecticut,

In consideration of the representations, agreements and warranties made in the application herefor, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, on each \$1,000 of the maximum indemnity herein provided for, to create a Safety Fund, as hereinafter described, and of Three Dollars per annum on each \$1,000, for expenses, to be paid as hereinafter conditioned and of the further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Robert H. Langdale of Terrace Park, county of Hamilton, state of Ohio, with the following agreements:

That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who shall have contributed

52 five years prior to the date of any such division their stipulated proportion of said Fund, by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand Dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of

Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division.

The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that so long as any Certificate of Membership in the Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required, together with any balance due said Company) to his legal representatives within ninety days after the receipt of such proofs, upon presentation and surrender of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

54 And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

1. Application Made Part of Contract.—The application on the faith of which this Certificate issues is hereby referred to and made part of this contract.

2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for expenses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; or by monthly or other pro rata installments of the same in advance for periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assess-

ment in accordance with the Table of Graduated Assessment Rates, as printed hereon, within thirty days from day on which notice bears date. And further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement with the Trustees aforesaid, a copy of which is printed hereon and hereby made a part of this contract; all such payments to be made direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission: And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if either the monthly dues, assessments, or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustee of the Safety Fund; and that if a legal and just claim to benefit, under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, or before January 1, 1885, and the sum collected on the assessment to be made in such event shall be paid over, as hereinbefore stipulated; or such claim shall arise after said Fund shall have accumulated to said amount, or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, or delivered by an agent of the Company, shall be deemed a legal and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary, showing such facts, shall be taken and accepted as conclusive evidence of the mailing of such notice, and of the facts aforesaid, as set forth in such transcript.

5. Change of Residence or Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining underground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said

57 Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delirium tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—or while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, misrepresentation, or false statement or statement not true made in the application on which this Certificate issues; or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim upon or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said

58 member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at

the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such account or indebtedness in payment thereof. And that in case any Country, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company on account of any moneys collected hereon, said member agrees to pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to hold this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

11. Powers of Agents.—Agents of the Company can not alter or waive any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements hereon, nor to receive money or assessments, dues, or Safety Fund deposits maturing and payable after the issue of this Certificate.

In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and delivered this contract, at Hartford, Conn., this 4th day of May, one thousand eight hundred and eighty-two.

[SEAL.]

(Signed)

T. R. FOSTER,

President.

(Signed) W. A. COWLES,

Ass. Secretary.

(Agents of the Company are not authorized to make any indorsements on this certificate.)

Trustee's Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certifi-

cate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to-wit:

"That said Company will deposit said sum of ten dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the uses and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall then amount to three hundred thousand dollars, or whenever thereafter said sum shall be attained, make a semi-annual distribution of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said department at such times.

61 "who shall have contributed five years prior to the date of any such division their stipulated proportion of said Fund.

"by applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to one million dollars all subsequent receipts therefor shall be distributed by the said Company in like manner as the interest."

"Said Company further agrees that if at any time, after said Fund shall have amounted to three hundred thousand dollars, or after five years from January 1, 1880, if that amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if and legally due, to pay the maximum indemnity provided for by the terms of any Certificates issued in said department, and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and distribute the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list

62 "under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for a period of sixty days from this date."

"And said Company further agrees that so long as any Certificate of membership in its Safety Fund Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the

party of the second part and in accordance with its agreement with its Certificate holders, as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the

63 party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and income, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders; and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

64 That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of

said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper distribution thereof as agreed with its Certificate holders.

65 All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part; and all payments required herein to be made to the Certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in and covered by such reasonable charge as shall be made for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said

trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

66 And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In Witness Whereof, the party of the first part has affixed hereunto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,

By E. H. CROSBY,
President, and

STEPHEN BALL,
Secretary.

[SEAL.]

SECURITY COMPANY,
By ROBERT E. DAY,

President, and
WILLIAM L. MATSON,
Treasurer.

67 *Table of Graduated Assessment Rates for Death Losses for
Every \$1,000 of a Total Indemnity of \$1,000,000.*

| Age. | Rate. | Age. | Rate. | Age. | Rate. |
|--------------|--------|--------|--------|--------|--------|
| 15 to 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.35 |
| 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| 23.... | .69 | 37.... | 1.03 | 50.... | 1.47 |
| 24.... | .71 | 38.... | 1.06 | 51.... | 1.54 |
| 25.... | .73 | 39.... | 1.09 | 52.... | 1.63 |
| 26.... | .75 | 40.... | 1.12 | 53.... | 1.72 |
| 27.... | .77 | 41.... | 1.14 | 54.... | 1.81 |
| 28.... | .79 | 42.... | 1.16 | 55.... | 1.92 |
| 29.... | .81 | 43.... | 1.18 | 56.... | 2.03 |
| 30.... | .83 | 44.... | 1.20 | 57.... | 2.15 |
| 31.... | .85 | 45.... | 1.22 | 58.... | 2.32 |
| 32.... | .88 | 46.... | 1.25 | 59.... | 2.50 |
| 33.... | .91 | 47.... | 1.30 | 60.... | 2.68 |
| 34.... | .94 | | | | |

These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting.

Received of The Hartford Life and Annuity Insurance Company, of Hartford, Conn. —, in full for all claims under this Certificate. No. —, on the life of — — —, deceased.

Beneficiary.

Beneficiary.

Witness:

(Back of Policy.)

This Company has no agents authorized to receive money on Assessments, Dues, or Safety Fund.

No. 30031.

Safety Fund Department.

Certificate of Membership.

Benefit Not to Exceed \$3,000.

Issued by the Hartford Life and Annuity Insurance Co.,
Hartford, Conn.

Name, Robert H. Langdale.

Agent, B. F. Coon.

Read carefully all the conditions of this certificate.

No person should be a party to a contract without knowing all its conditions.

After an Agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

Always give Number of this Certificate in writing to Home Office.

69 Shortly after the certificates in question had been issued to the plaintiff, the defendant company made an effort to secure his assent, and that of other persons in the State of Ohio holding like certificates, to a change or modification of the terms thereof, through means of a printed slip or rider to be signed by the certificate holder, and to be attached thereto, whereby he consented that assessments might be levied against his certificate in the same manner and for like amounts at the same attained age, as were levied against such certificates prior to the issuance of the particular certificate, which it was so sought to change. The effect of which was to abrogate the provision in the table of rates that after the holder arrived at the age of sixty years the rate should be \$2.68 for every \$1,000 of a total indemnity of \$1,000,000, and to permit an assessment, after the age of sixty years, up to \$4. The plaintiff, upon application to him by the special agent of the defendant company, who had been sent to him to secure his consent, refused to sign the slip or rider, or consent to the proposed change.

The plaintiff paid all the assessments upon his certificate of membership that were issued and levied thereon by the defendant company, up to and including the assessment levied on the 24th day of February, 1914, after which time he ceased paying the same.

The following table shows the assessments that were issued by the defendant and paid by the plaintiff after he reached the age of sixty years, which occurred on the 4th day of August, 1903, together with the mortality ratios actually used in each instance by the defendant company, the excess beyond the rate of \$2.68, with interest thereon computed up to the first day of September, 1919.

| Date. | Quarterly call. | Amt. of insurance. | Age rate used. | Mortality ratio used. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|-------------------|--------------------------|--------------|-------------|-----------|
| 1908. | | | | | | | |
| March | 118 | 3,000 | 4.00 | 3.20 | 38.40 | 12.67 | 6.46 |
| June | 119 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 7.45 |
| September | 120 | 3,000 | 4.00 | 3.60 | 43.20 | 14.26 | 6.84 |
| December | 121 | 3,000 | 4.00 | 3.30 | 39.60 | 13.07 | 6.07 |
| 1909. | | | | | | | |
| March | 122 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 6.77 |
| June | 123 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 6.55 |
| 71 | | | | | | | |
| September | 124 | 3,000 | 4.00 | 3.80 | 45.60 | 15.05 | 6.32 |
| December | 125 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 6.74 |
| 1910. | | | | | | | |
| March | 126 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 6.49 |
| June | 127 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 6.24 |
| September | 128 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 5.99 |
| December | 129 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 5.74 |
| 1911. | | | | | | | |
| March | 130 | 3,000 | 4.00 | 4.40 | 52.80 | 17.42 | 5.75 |
| June | 131 | 3,000 | 4.00 | 4.40 | 52.80 | 17.42 | 5.49 |
| September | 132 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 4.99 |
| December | 133 | 3,000 | 4.00 | 4.35 | 52.20 | 17.23 | 4.91 |

| | | | | | | | | | |
|---|-----|-------|------|------|-------|-------|-----------------|-----------------|--|
| 1912. | | | | | | | | | |
| March | 134 | 3,000 | 4.00 | 3.95 | 47.40 | 31.76 | 15.64 | 4.22 | |
| June | 135 | 3,000 | 4.00 | 5.65 | 67.80 | 45.43 | 22.37 | 5.70 | |
| September | 136 | 3,000 | 4.00 | 5.15 | 61.80 | 41.41 | 20.39 | 4.89 | |
| December | 137 | 3,000 | 4.00 | 3.77 | 45.24 | 30.31 | 14.93 | 3.33 | |
| 1913. | | | | | | | | | |
| March | 138 | 3,000 | 4.00 | 3.95 | 47.40 | 31.76 | 15.64 | 3.28 | |
| June | 139 | 3,000 | 4.00 | 5.94 | 71.28 | 47.76 | 23.52 | 4.59 | |
| September | 140 | 3,000 | 4.00 | 4.86 | 58.32 | 39.07 | 19.25 | 3.46 | |
| December | 141 | 3,000 | 4.00 | 4.10 | 49.26 | 32.96 | 16.30 | 2.69 | |
| 1914. | | | | | | | | | |
| March | 142 | 3,000 | 4.00 | 5.63 | 67.58 | 45.27 | 22.31 | 3.35 | |
| | | | | | | | <u>\$543.68</u> | <u>\$208.23</u> | |
| Over Charge | | | | | | | | | |
| Interest to September 1st, 1916 | | | | | | | \$543.68 | | |
| Interest from September 1st, 1916, to Sept. 1st, 1919 | | | | | | | <u>\$751.91</u> | | |
| | | | | | | | 97.86 | | |
| Total | | | | | | | <u>\$849.77</u> | | |

72 The case of Douds vs. The Hartford Life Insurance Company, now pending before this court and this referee, is a parallel case to the instant one, differing only in that in the former case the additional relief is sought of compelling the defendant to specifically perform the provisions of the membership certificate, still in force. Like proceedings in the Court of Common Pleas were had in both cases.

After the demurrers of the defendant company had been overruled in the Douds case, it commenced a proceeding in prohibition in the Supreme Court of Ohio, in which it prayed for a writ of prohibition against the plaintiff and the judges of the Court of Common Pleas of and for Franklin county, Ohio, to prohibit Douds from prosecuting and the judges from proceeding in the case, upon the grounds that the inquiry upon which the relief prayed for here must rest would require a visitation of the affairs of the company, its home office in Hartford, Connecticut; would amount to an interference of the internal management of a foreign corporation, beyond the jurisdiction of the court of any state other than Connecticut; that the courts of other states other than Connecticut could not enforce their decree if granted; that if Douds is entitled to have such relief granted in the courts of Ohio then similar or like remedies must be granted to each of the several members who reside in the several states of the United States; that the granting of such relief would interfere with and destroy the contractual relations between the members of the Safety Fund Department; would impair the unity and integrity of the plan of insurance contemplated in the membership certificates and would amount to an extermination of the business of the company. The further claim was asserted that if the relief prayed for in the action was awarded, it would deprive the company of its property without due process of law, contrary to the Fourteenth Amendment to the Federal Constitution.

73 The case was submitted upon a general demurrer to the answer. The Supreme Court, sustaining the demurrer, denied the writ and dismissed the petition. The State ex rel. The Hartford Insurance Co. vs. Douds et al., 96 Ohio State, 604. The case not being otherwise reported, the following is a copy of the journal entry of the court:

"This case came on to be heard on the petition of the relator, answer of the defendants, and the demurrer of the relator to said answer, and was argued by counsel. The court finds that said demurrer searches the record and raises the question of the sufficiency of the facts and allegations set forth in the said petition and the right of the relator upon such facts and allegations to have and receive the relief therein prayed for, and the court now therefore ceasing to consider said demurrer as a demurrer to the petition finds that the same is well taken upon the cases of State ex rel. Nolan v. Clendenen et al., 93 Ohio St., 264; State ex rel. Garrison v. Brown et al., 94 Ohio St., 115; State ex rel. Barbee, Exr., v. Allen, Probate Judge, ante, 10, and State ex rel. Faber v. Jones et al., Judges, Ohio St., 357, in that said facts and allegations of such petition

insufficient, and do not entitle the relator to the relief prayed for, and does therefore sustain such demurrer as a demurrer to said petition.

The relator not desiring to plead further herein it is ordered and adjudged that said demurrer as a demurrer to the petition be and the same is hereby sustained; that the alternative writ heretofore allowed herein be quashed, that the writ of prohibition and relief prayed for by the relator in said petition be and the same is hereby refused and denied, and that said petition be and the same is hereby dismissed.

Writ denied."

Thereupon the defendant company filed a petition for a writ of error in the Supreme Court of the United States to reverse the judgment of the Supreme Court of Ohio in the prohibition case. *State of Ohio ex rel. Hartford Life Insurance Co. v. Douds et al.*, 245 U. S., 642. On motion of the defendant in error to affirm the judgment below, the court, on January 28, 1918, made the following order:

"Per curiam: Dismissed for want of jurisdiction upon the authority of Sec. 237, Judicial Code, as amended by act of Congress, September 6, 1916, c. 448, 39 Stat., 726; *Philadelphia and Reading Coal and Iron Company vs. Gilbert*, 245 U. S., 162."

After the proceedings in the Supreme Court of Ohio and the Supreme Court of the United States, in the Douds case, above stated, had been concluded, the defendant company filed a petition in prohibition in the Supreme Court of Ohio, in the Langdale case. The Common Pleas Court had overruled demurrer to the petition challenging the jurisdiction in like manner as in the Douds case. The court denied the writ. See *The State ex rel. The Hartford Life Insurance Co. vs. Langdale*, 98 Ohio St., 470, wherein, without other or further report it is stated:

"Writ denied on authority of *State ex rel. The Hartford Life Insurance Co. vs. Douds et al.*, 96 Ohio State, 604."

Thereupon the defendant company filed in the Supreme Court of the United States, a petition for a writ of certiorari to the Supreme Court of Ohio in the Langdale case. The court denied the writ. See *State of Ohio ex rel. The Hartford Life Insurance Co. vs. Robert H. Langdale*, 248 U. S., 564, wherein, without other report, it is stated:

"Petition for writ of certiorari to the Supreme Court of the State of Ohio, denied."

Conclusions of Law.

Your referee, upon the issues joined and involved, has reached certain conclusions of law, which he proceeds to state.

The Question of Jurisdiction.

The question of paramount importance in the case is the one of jurisdiction.

In the light of the proceedings in the Court of Common Pleas, overruling the demurrers of the defendant company to the petition in the Supreme Court of Ohio, in denying the writ of prohibition in the Douds and Langdale cases and in the Supreme Court of the United States in dismissing the petition for a writ of error in the Douds case and in denying the petition for a writ of certiorari in the Langdale case, the referee cannot feel that the question of jurisdiction, as to him, is an open one, but on the contrary, is *res judicata*.

In the Douds prohibition case, the writ was denied apparently on the ground that the writ of prohibition will not issue to prohibit the Court of Common Pleas from determining its own jurisdiction. That this was the ground of its decision is to be inferred from the citation of authorities in the journal entries of the court, the case not being otherwise reported. The Hartford Life Insurance Company vs. Douds, 96 Ohio St., 604.

The following is a copy of the opinion of Judge Kinkead overruling the demurres to the petition in the Douds case:

"The cause of action is to be regarded as one in the nature of specific performance. Plaintiff seeks to have it adjudged that the contract made by him with the company required payment of a premium of only \$2.68 per thousand after arriving at the age of sixty years. He is also asking that, if that be the meaning and intent of the contract, defendant shall be compelled to perform it accordingly—to receive the premiums stipulated and to keep in force the insurance. The claim for the amount of money paid in excess of the contract is incidental to the paramount relief sought.

Counsel for defendant contends that to grant the equitable relief sought would of necessity interfere with the operation of the safety fund department; that such mode of relief employed by the courts of this state, or by the courts of other states than Connecticut, the home of the defendant and the place where the contract was made would interfere with and control the management of the business of the company and with the present and future relations of the members and plans.

It is said that it is essential to the integrity of the safety fund department plan that uniformity in the manner and method of making the assessments shall be maintained through the restriction of the Connecticut courts of jurisdiction over the assessments.

Conclusive answer may be made to the contention by the observation that the contract of insurance must have the same meaning in every state where there are policyholders. There is but one definite plan of assessment and insurance which is prescribed by the contract.

A holder of a certificate of membership issued by defendant enters into a contract with the company which agrees to assess and collect

payments according to the table of graduated rates which is part of the contract. The company, and not the subscribers to other policies, makes the contract. The company, and not the holders of policies, must perform the conditions undertaken by it.

I fail to perceive the logic of counsel (for defendant) in the reference to *State ex rel. Hartford Life Insurance Company vs. Shain*, 245 Mo., 78, where it is stated that the Missouri Court held that the equitable relief there sought, being the same as here, came within the rule which forbids courts other than those of the home jurisdiction of the association from interfering with or controlling the action of the association in its relation to its members.

It would be anomalous to require a holder of a policy by one in Ohio to go to the home of the defendant in Connecticut to compel it to perform its contract according to its terms and conditions. Compelling defendant to carry out its contract according to its terms and conditions is not an interference with the action of the company in its relation to its members."

The foregoing opinion, upholding the jurisdiction is, of course, conclusive upon the referee.

But if the question was open and the referee was called upon, under the order of reference, to report his conclusions upon it, he would feel impelled to uphold the jurisdiction.

Jurisdiction of the subject matter is always to be presumed and this is especially true in states which have constitutional provisions like our Section 15 of the Bill of Rights, which provides:

"Section 16. All courts shall be open and every person, for an injury done him in his land, goods, person or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

A contract is here involved which was entered into in Ohio by one of our citizens with a Connecticut corporation. The defendant has established a domicile of business in this state and, in assuming that domicile, subjects itself, the same as an individual or a domestic corporation, to the jurisdiction of our courts with respect to contracts made with citizens of our state. It must be taken to assent to such jurisdiction when it comes into the state to transact business. The plaintiff should not be driven to the courts of the state of Connecticut for the assertion of his rights, whatever they may be, under his contract, unless the reasons therefor are imperative.

The action is one to recover back payments made by the plaintiff to the defendant in excess of those called for by the contracts. The defendant insists that the inquiry into the matter of payments of assessments claimed to have been levied and paid in excess of those provided for in the contract would involve an interference with the internal affairs of the company, beyond the jurisdiction of any court other than that of the domicile of the defendant.

79 The contracts in question provided that upon the death of a member:

"An assessment shall be made upon the holders of all certificates in force in said department at the date of said death according to the table of graduated assessment rates given hereon, as determined by their respective ages and the number of such certificates in force at the date of such death."

The table of graduated assessments on the certificate ran from the age of fifteen to sixty years. The specified rate at the age of sixty years was \$2.68. There was no rate specified beyond that age, nor was there anything in the contracts which gave to the company any discretionary power or authority to levy special assessments other than those provided for in the table.

The company adopted the custom of levying assessments quarterly. Assessments were levied against the plaintiff and paid by him after he had reached the age of sixty years, beyond the sum of \$2.68.

The method of ascertaining an assessment to be levied did not involve the exercise of discretionary powers upon the part of the officers of the defendant company. It required a simple mathematical calculation. The number of outstanding certificates were ascertained. The number of deaths since the last assessment were ascertained. One divided into the other gave the mortality ratio, and that, in each instance was multiplied by the rate specified in the certificate contract, at the age attained by the holder, thus producing the amount of the assessment. It is true, that we have not, in ev-

80 dence, before the court, the number of outstanding certificates nor the number of deaths, at the time each assessment was levied, but we have here in evidence the amount of each assessment levied per \$1,000 and the mortality ratios actually ascertained and used by the company at each assessment period. And we have the respective amounts paid by the plaintiff after he reached the age of sixty years together with the dates of payment. Thus, without going into the books or disturbing or interfering with the internal affairs of the company, all the factors are before the court necessary to ascertain the amounts of the assessment levied against and paid by the plaintiff in excess of the contract and to grant the relief prayed for.

The plaintiff was entitled to have the ascertained ratio multiplied by \$2.68, the amount specified in his contract after reaching the age of sixty years, instead of a larger sum. He was not bound by a calculation which compelled him to contribute at a rate beyond the terms of his contract. The rights of other certificate holders are not involved. They are not before the court. These certificates of membership amounted to an ordinary life insurance contract, containing a definite agreement as to benefits and terms of payment of premiums with no reservation of authority upon the part of the company to vary their terms.

It seems to the referee that in cases, where the courts, having before them contracts of similar import to those here involved, and where like relief was sought, have refused to proceed, such refusal was

rather a matter of expediency than want of jurisdiction. Our courts, having jurisdiction of the parties may decree an accounting under circumstances such as are here involved in accordance with well settled doctrine of equity jurisprudence. They must have before them the necessary evidence upon which to base a decree. If the proof is not available the party fails, but as to the power of the court to entertain the action there can be no question.

It will be noted that the action is not one to compel or enforce an assessment, or to determine the extent of the interest of the plaintiff in the Safety Fund of the defendant or the method of the distribution thereof. To grant the relief prayed for will not disturb the Safety Fund nor in anywise interfere with the internal management and operation of the defendant company. It will simply require the defendant, over which the court has jurisdiction, to live up to a contract entered into in Ohio with an Ohio citizen. Plaintiff does not sue as one of a class. Other certificates are not involved. The result here cannot affect any other certificate holder. A decree in accordance with the prayer of the petition will impose no other or different conditions or burdens upon the defendant than have already been imposed upon it by the courts of the state of its adoption. The referee does not feel that it is incumbent upon him to review the numerous cases, many of which are quite similar in their facts to the instant case, and some of which are in direct conflict, upon the question of jurisdiction, in view of the conclusions already reached by the courts to which he is subordinate. In upholding the jurisdiction, he is content to follow in their footsteps.

Voluntary Payments.

It is contended, as matter of defense, by the defendant, that the assessments levied against the plaintiff were paid voluntarily by him, with knowledge and the means of knowledge of all the facts, and that he is therefore estopped to deny or challenge the validity or propriety thereof.

The soundness of the general proposition that a payment voluntarily made, as applied to parties acting at arm's length, cannot be recovered back, is well settled. But the doctrine has no application in cases where such confidential relations exist between the parties as that one is entitled to rely on the good faith of the other. It is equally well settled that payments, although voluntarily made, will be inquired into by the courts and money received by the party performing the duty to the other party to protect his interests, will be restored to him if he has been imposed upon and injured by reason of the fiduciary relation.

The plaintiff had the right to rely upon the good faith of the defendant and that, in making the assessments, it would do so in accordance with the terms of his contract. He had no means of knowing when notice of the amount of an assessment came to his hands, whether or not it had been levied according to his specified rate because he had not the factors necessary to its computation. They

were exclusively in the possession of the defendant. Relying upon the good faith of the managers of the defendant, he could only assume that the assessments were legal and proper and pay them. Such payments are not voluntary within the purview of the general doctrine relating to voluntary payments and their finality.

The referee concludes, as a matter of law, that the defendant is not estopped from demanding an accounting by the defendant for the amounts of assessments paid by him at a rate in excess of \$2.68 called for in his contract.

Statute of Limitations.

The defendant, as matter of defense, invoked the six year Statute of Limitations, and insists that if it be held that the plaintiff is entitled to recover, that in computing the amount the same should be limited to the alleged excesses in the assessments to the six years immediately preceding the commencement of the action.

The assessments levied by the defendant company were received by it in a trust capacity which continued and subsisted. Section 11236 of the General Code provides:

"Section 11236. The provisions of this chapter, respecting lapse of time as a bar to suit, shall not apply in the case of a continuing and subsisting trust."

The referee concludes, as a matter of law, that the Statute of Limitations does not apply to the payments in question for the reason that they were received in a trust capacity, within the contemplation of Section 11236 of the General Code, and that, therefore, the defense of the Statute of Limitations is not well taken.

Conclusion.

The referee concludes that the plaintiff is entitled to a decree, prayed for in the petition, requiring the defendant to account for assessments paid by the plaintiff in excess of the contract rate, in the sum of \$849.77, with interest thereon from the first day September, 1919.

Respectfully submitted,

GEO. B. OKEY,
Referee.

Supplemental Report.

On Wednesday, the 12th day of November, 1919, the referee announced his decision in this case, and delivered to counsel for the respective parties a copy of his report, and notified counsel that he would file with the clerk of the common pleas court his decision and report herein on the 28th day of November, 1919.

Counsel for defendant thereupon gave notice of his intention to file herein a motion for a new trial.

Thereupon, on Friday, the 14th day of November, 1919, the defendant by its counsel filed with and submitted to the referee the following motion, to wit:

Motion of Defendant to Vacate Report of Referee and for New Trial.

1. Now comes the defendant and moves that the report of the referee herein be vacated, set aside, and held for naught, for the following reasons:

(a) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(b) That the referee under the order of reference herein was not authorized or empowered to make special findings of fact and conclusions of law, but that his authority was limited solely to taking of the testimony of the witnesses and reporting the same to the court.

2. If the for-going motion be overruled, the defendant moves that the report of the referee be vacated and a new trial granted, for the following causes affecting materially its substantial rights:

(a) Error in the amount of recovery in that it is too large.

(b) Errors of the referee in the admission of evidence offered by the plaintiff, to which the defendant at the time excepted.

(c) The report is not sustained by sufficient evidence.

(d) The report is contrary to law.

(e) Errors of law occurring at the trial and excepted to by the defendant.

(f) Neither the court nor the referee had any jurisdiction of this defendant.

(g) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(h) Neither the court nor the referee had any jurisdiction to grant the relief prayed for by the plaintiff herein.

(i) The findings of fact and conclusions of law of the referee constitute a regulation and control of the conduct of the internal affairs of this defendant at its domicile in the State of Connecticut, and extend the jurisdiction of the courts of this state beyond the boundaries thereof, and interfere with a subject matter which is within the exclusive jurisdiction of the courts of Connecticut, all of which is contrary to the laws and the Constitution of the State of Ohio and to the Fourteenth Amendment to the Constitution of the United States, and further, a judgment or decree of the plaintiff upon such report of the referee would deprive this

defendant of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

THE HARTFORD LIFE INSURANCE
COMPANY,
By JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Its Attorneys.

And thereupon, on Saturday, the 15th day of November, 1912, the defendant by its counsel filed with and submitted to the referee the following objections and exceptions to his report, to wit:

Objections and Exceptions of Defendant to Report of Referee.

Now comes the defendant without prejudice to or waiving any of its rights or remedies under its motion for a new trial filed herein, and says if said motion is overruled, that in that event it objects and excepts to the findings of fact and conclusions of law of the referee herein, upon the following grounds:

1. Neither the court nor the referee had any jurisdiction of the subject matter of this action.

2. That the referee under the order of reference was not authorized or empowered to make special findings of fact and conclusions of law, but that his authority was limited solely to taking of the testimony of the witnesses and reporting the same to the court.

87 3. Error in the amount of recovery is that it is too large.

4. The report is not sustained by sufficient evidence.

5. The report is contrary to law.

6. Neither the court nor the referee had any jurisdiction of the action.

7. Neither the court nor the referee had any jurisdiction to grant the relief prayed for by the plaintiff herein.

8. The findings of fact and conclusions of law of the referee constitute a regulation and control of the conduct of the internal affairs of this defendant at its domicile in the State of Connecticut, and extend the jurisdiction of the courts of this state beyond the boundaries thereof, and interfere with a subject matter which is within the exclusive jurisdiction of the courts of Connecticut, all of which is contrary to the laws and the Constitution of the State of Ohio and to the Fourteenth Amendment to the Constitution of the United States, and further, a judgment or decree for the plaintiff upon said report of the referee would deprive this defendant of its property.

without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

THE HARTFORD LIFE INSURANCE
COMPANY,
By JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Its Attorneys.

And thereupon, on Monday, the 17th day of November, 1919, said motion of the defendant for a new trial herein came on to be heard before the referee and was argued by counsel. On consideration whereof the referee overrules said motion, to which ruling and decision overruling the same the defendant by its counsel excepted.

And thereupon, on Monday, the 17th day of November, 1919, said objections and exceptions of the defendant to the report of the referee herein came on to be heard before the referee and was argued by counsel. On consideration whereof the referee overruled each and all of said objections and exceptions, to which ruling and decision overruling the same the defendant by its counsel excepted.

The defendant thereupon on this 28th day of November, 1919, presented its bill of exceptions and the same on this 28th day of November, 1919, was allowed, signed, sealed and filed with the report of the referee as a part of the record in this case, but not to be spread at large upon the journal.

In the trial of this case, the referee employed Armstrong & Okey, official stenographers, to report and transcribe the testimony and the report of the referee, and there is due them for said services the sum of \$96.85, which should be taxed and paid as part of the costs of this action.

GEO. B. OKEY,
Referee.

Dated November 28, 1919.

Motion of Defendant to Vacate Report of Referee and for New Trial.

[Filed November 14, 1919.]

1. Now comes the defendant and moves that the report of the referee herein be vacated, set aside and held for naught, for the following reasons:

(a) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

(b) That the referee under the order of reference herein was not authorized or empowered to make special findings of fact and conclusions of law, but that his authority was limited solely to taking

of the testimony of the witnesses and reporting the same to the court.

2. If the foregoing motion is overruled, the defendant moves that the report of the referee be vacated and a new trial granted, for the following causes affecting materially its substantial rights:

- (a) Error in the amount of recovery in that it is too large.
- (b) Errors of the referee in the admission of evidence offered by the plaintiff, to which the defendant at the time excepted.
- (c) The report is not sustained by sufficient evidence.
- (d) The report is contrary to law.
- (e) Errors of law occurring at the trial and excepted to by the defendant.
- (f) Neither the court nor the referee had any jurisdiction of this defendant.
- (g) Neither the court nor the referee had any jurisdiction of the subject matter of this action.

90 (h) Neither the court nor the referee has any jurisdiction to grant the relief prayed for by the plaintiff herein.

(i) The findings of fact and conclusions of law of the referee constitute a regulation and control of the conduct of the internal affairs of this defendant at its domicile in the state of Connecticut, and extend the jurisdiction of the courts of this state beyond the boundaries thereof, and interfere with a subject matter which is within the exclusive jurisdiction of the courts of Connecticut, all of which is contrary to the laws and the Constitution of the State of Ohio and to the Fourteenth Amendment to the Constitution of the United States, and further, a judgment or decree for the plaintiff upon such report of the referee would deprive this defendant of its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

THE HARTFORD LIFE INSURANCE
COMPANY,
By JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Its Attorneys.

*Motion to Confirm Report of Special Master Commissioner,
Hon. George B. Okey.*

[Filed January 9, 1920.]

Now comes the plaintiff, by his counsel, and the report of Hon. George B. Okey, as special master commissioner in this cause, having heretofore been filed herein.

The plaintiff moves that the same be confirmed and for an order and decree thereon in conformity thereto.

SMITH W. BENNETT,
Attorney for Plaintiff.

91 In the Court of Appeals, Franklin County, Ohio.

[No. 779.]

ROBERT H. LANGDALE, Plaintiff,

vs.

THE HARTFORD LIFE INSURANCE COMPANY, Defendant.

Transcript of Docket and Journal Entries.

1920, March 26.—Appeal bond filed.

1920, March 26.—Transcript of docket and journal entries filed.

1920, March 26.—Eighteen original papers filed.

1920, March 26.—Bill of exceptions filed.

1920, September 20.—Three briefs of plaintiff in error filed.

1920, September 28.—Stipulation filed.

1920, October 5.—Three briefs for defendant in error filed.

1920, October 29.—Motion for new trial filed.

1920, November 8.—Motion for new trial refiled.

1920, November 8.—Motion overruled; judgment against defendant, The Hartford Life Insurance Company, for \$847.77 with interest at 6% from September 1, 1919, as entry; exceptions.

1920, November 13.—Bill of exceptions filed.

92 1920, November 13.—Notice of filing bill of exceptions filed.

1920, November 13.—I served notice on Smith W. Bennett, attorney for plaintiff by mailing to him personally a copy thereof. Guy R. Winegarner, clerk; by A. Egold, deputy.

1920, November 23.—Bill of exceptions transmitted to the court.

1919, November 23.—Bill of exceptions returned by the court.

November 8, 1920.—This cause now coming on for hearing was submitted to the court upon the evidence and proof heretofore taken by the referee and incorporated with the report of such referee and filed in this cause, and upon the pleadings. On consideration whereof the court finds on the issues joined for the plaintiff, Robert H. Langdale, and that the defendant, The Hartford Life Insurance Company, is indebted to him in the sum of eight hundred forty-seven and 77/100 dollars (\$847.77) with interest thereon at the rate of six per centum from the first day of September, 1919.

This cause further coming on for hearing upon the motion of the defendant to set aside the finding herein, and for a new trial, the court on consideration overrules the same, to each of which findings, orders and rulings the defendant then excepted.

It is therefore considered, adjudged and decreed by the court that the plaintiff, Robert H. Langdale, recover from the defendant, The

93 Hartford Life Insurance Company, the sum of eight hundred forty-seven and 77/100 dollars (\$847.77) with interest thereon at the rate of six per centum from the first day of September, 1919, and his costs herein expended, including a fee of \$250.00 heretofore allowed by the Court of Common Pleas to the referee herein, and in all taxed at \$—, to which the defendant then excepted.

This cause further coming on for hearing on the motion of the defendant to set aside such judgment and for a new trial herein, the court on consideration thereof, overrules the same, to each of which foregoing orders, findings, rulings and judgments the defendant then excepted.

[Duly certified.]

Motion for New Trial.

[Refiled November 8, 1920.]

Now comes the defendant and moves that the decision, order and judgment of the court herein in favor of the plaintiff be vacated and set aside and that a new trial be granted herein for the following causes affecting materially the substantial rights of the defendant:

(1) That said decision, order and judgment of the court herein, in favor of plaintiff and against defendant, is rendered for too large an amount.

(2) That said decision, order and judgment is not sustained by sufficient evidence and is contrary to law.

(3) That said decision, order and judgment should have been in favor of the defendant.

(4) That this court erred in deciding, ordering and adjudging that it has jurisdiction over the subject matter of this action.

94 (5) That this court erred in deciding, ordering and adjudging that the assumption of jurisdiction by it herein is not a violation of the rights of the defendant, and is not a taking of its property and a denial of due process of law, under and against the provisions of the fourteenth amendment to the Constitution of the United States.

(6) That this court erred in deciding, ordering and adjudging that the payments by plaintiff, sought to be recovered herein, were not voluntarily made so as to preclude recovery by him.

(7) That this court erred in deciding, ordering and adjudging that plaintiff was not barred from recovery herein by reason of the provisions of the statute of limitations.

(8) Other errors of law, apparent on the face of the record, in said decision, order and judgment, in so entering judgment in favor of

plaintiff and against defendant, upon the evidence submitted in this court.

JONES, HOCKER, SULLIVAN &
ANGERT AND
ARNOLD & GAME,
Attorneys for Defendant.

95

Bill of Exceptions.

[Filed November 13, 1920.]

Present:

Smith W. Bennett, on behalf of the Plaintiff.
Arnold & Game, on behalf of the Defendant.

Be it remembered, that on the trial of the above entitled cause, at the September Term, A. D. 1920, of the Court of Appeals of Franklin county, Ohio, before Hons. James I. Allread, H. L. Ferneding and Albert H. Kunkle, judges, to maintain the issues on behalf of the respective parties hereto to be maintained, the parties, plaintiff and defendant, entered into a certain stipulation in writing, which was filed herein on the twenty-eighth day of September, A. D. 1920, which said stipulation, with the caption omitted, is in the words and figures following, to wit:

Stipulation as to Submission.

It is stipulated by and between the respective parties in the above entitled cause that the same shall be submitted herein upon the evidence and proof heretofore taken before the referee and incorporated with the report of said referee and filed in this cause, and the pleadings and exhibits filed in this cause.

(Signed)

SMITH W. BENNETT,
Attorney for Plaintiff.

(Signed)

ARNOLD & GAME,
Attorneys for Defendant.

96

And thereupon, pursuant to said stipulation, all the evidence and proof heretofore taken before the referee, was offered and admitted in evidence on behalf of the respective parties hereto, all objections and exceptions appearing therein being preserved to the party making the same as if originally raised and saved on this trial of this cause, which said evidence and proof is hereto attached, marked Exhibit "AA" and made a part hereof.

And thereupon the plaintiff rested.

And thereupon the defendant rested.

And the foregoing was all of the evidence introduced, offered or admitted on behalf of the plaintiff and on behalf of the defendant on this trial of this cause.

And thereupon, on the issues joined, the court found in favor of the plaintiff, ordering, adjudging and decreeing that the plaintiff, Robert H. Langdale, recover from the defendant, The Hartford Life Insurance Company, the sum of \$847.77, together with interest thereon at the rate of six per cent from the first day of September, 1919, and his cost herein expended, including a fee of \$250.00 allowed to the said referee and in all taxed at \$—.

And thereupon the said defendant, The Hartford Life Insurance Company, to each and all of said findings, orders, judgments and decrees aforesaid in favor of said plaintiff and against said defendant at the time excepted and still excepts thereto.

And thereupon the defendant filed with the clerk of said court and submitted to said court its certain motion for a new trial, which said motion for a new trial, with the caption omitted is in the words and figures following, to wit:

97

Motion for New Trial.

Now comes the defendant and moves that the decision, order and judgment of the court herein in favor of the plaintiff be vacated and set aside and that a new trial be granted herein for the following causes affecting materially the substantial rights of the defendant:

(1) That said decision, order and judgment of the court herein, in favor of plaintiff and against defendant, is rendered for too large an amount.

(2) That said decision, order and judgment is not sustained by sufficient evidence and is contrary to law.

(3) That said decision, order and judgment should have been in favor of the defendant.

(4) That this court erred in deciding, ordering and adjudging that it has jurisdiction over the subject matter of this action.

(5) That this court erred in deciding, ordering and adjudging that the assumption of jurisdiction by it herein is not a violation of the rights of the defendant, and is not a taking of its property and a denial of due process of law, under and against the provisions of the Fourteenth Amendment to the Constitution of the United States.

(6) That this court erred in deciding, ordering and adjudging that the payments by plaintiff, sought to be recovered herein, were not voluntarily made so as to preclude recovery by him.

(7) That this court erred in deciding, ordering and adjudging that plaintiff was not barred from recovery herein by reason of the provisions of the statute of limitations.

98

(8) Other errors of law, apparent on the face of the record in said decision, order and judgment, in so entering judgment

ment in favor of plaintiff and against defendant, upon the evidence submitted in this court.

(Signed)

JONES, HOCKER, SULLIVAN &
ANGERT,
ARNOLD & GAME,
Attorneys for Defendant.

And thereupon the court overruled said motion for a new trial so filed as aforesaid by said defendant, to which ruling of the court in overruling said motion for a new trial the said defendant, The Hartford Life Insurance Company, at the time excepted and still excepts thereto.

And thereupon the court entered up judgment as aforesaid in favor of said plaintiff and against said defendant in the sum of \$847.77 with 6% interest from September 1, 1919, to which ruling of the court in entering up judgment as aforesaid in favor of said plaintiff and against said defendant, the said defendant, The Hartford Life Insurance Company, at the time excepted and still excepts thereto and on the thirteenth day of November, A. D. 1920, filed this its bill of exceptions in said cause.

And thereupon the clerk of said court having forthwith notified the plaintiff of the filing of this bill of exceptions, and no objection or amendment to said bill of exceptions having been filed by said plaintiff said clerk on the twenty-third day of November, 1920, presented to Hons. James I. Allread, H. L. Ferneding and Albert H. Kunkle, trial judges as aforesaid, this bill of exceptions for allowance and signature by said court as provided by statute.

99 And thereupon the court received this bill of exceptions on the twenty-third day of November, A. D. 1920, and said court did on the twenty-third day of November, A. D. 1920, certify that the foregoing was all of the evidence offered, introduced and as admitted on behalf of the plaintiff and on behalf of the defendant on this trial of this cause and did allow, sign and seal this bill of exceptions as provided by statute and did immediately transmit the same to the office of the clerk of said court to be made a part of the record herein but not spread at large upon the journal, according to the statute in such case made and provided, all of which is accordingly done as of said September Term, A. D. 1920, of said court.

JAMES I. ALLREAD,
H. L. FERNEDING,
ALBERT H. KUNKLE,
Judges of said Court.

*Proceedings Before Honorable George B. Okey, Referee, Beginning
Wednesday, January 22, 1919.*

Appearances:

Mr. Smith W. Bennett,
On behalf of the Plaintiff.
Messrs. Arnold & Game,
On behalf of the Defendant.

Be it remembered, that on the hearing of the above entitled cause, before Honorable George B. Okey, referee herein, and before the introduction of any evidence herein the following proceedings were had and objections, rulings and exceptions were noted:

100

Morning Session,
Wednesday, January 22, 1919.

The Referee: You may proceed, gentlemen. The matters set for hearing are the cases of Alonzo J. Doud vs. The Hartford Life Insurance Company, Number 74362, and Robert H. Langdale vs. The Hartford Life Insurance Company, Number 72527.

Mr. Game: I appear on behalf of the defendant under protest and object to the jurisdiction of the court over the subject matter of this action. The defendant reserves all of its rights as raised by its demurrer and amended demurrer to the petition herein, and also under its special defense in its answer, objection to the jurisdiction of the court over the subject matter of this action.

Mr. Bennett: On behalf of the plaintiff I wish to inquire of the referee whether or not he has received from the clerk a copy of the reply filed to the answer.

The Referee: Yes, it is with the papers.

Mr. Bennett: I will be ready on behalf of the plaintiff to proceed with the case on the twenty-ninth instant.

Mr. Game: Mr. James C. Jones of St. Louis is associate counsel for the defendant in this case, and I would like to communicate with him as to the time of the hearing; otherwise the twenty-ninth would be satisfactory to local counsel.

Mr. Bennett: On the part of the plaintiff we have heretofore taken the deposition of a Mr. Frey who, I understand, is absent from the city. The presentation of the case on the part of the plaintiff in chief will be very brief. I will be ready on the twenty-ninth to make

101 a statement of the plaintiff's case, and of my knowledge of the proceedings thus far. These particular cases are two of a series of five cases and they have heretofore been held in abeyance awaiting the decision of the Supreme Court of the United States, to which court error proceedings had been prosecuted from the judgment of the Supreme Court of Ohio in an original action of prohibition in each of these cases. The record has been duly certified back from the Supreme Court of the United States and the order of reference has been made after the questions have again been canvassed before Judge Kinkead. I merely state this as preliminary to a full statement on a week from today, and if counsel are ready at that time—which of course the plaintiff understands will be under protest the same as expressed here, I think we will be ready to submit our case.

The Referee: Well, the cases are set for hearing then for January 29, at 9:30 o'clock a. m.

And thereupon the further hearing of this case was adjourned until January 29, A. D. 1919, at 9:30 o'clock a. m.

Morning Session, January 29, 1919.

And thereupon the further hearing of this case was, by agreement, adjourned to January 31, 1919, at two o'clock p. m.

Afternoon Session, January 31, 1919.

And thereupon the further hearing of this case was resumed pursuant to adjournment.

Present:

Hon. George B. Okey, Referee.

Smith W. Bennett, on behalf of the plaintiff.

F. H. Game, on behalf of the defendant.

Mr. Game: If your Honor please, I would like again to state my position in regard to this matter and that is that I appear
102 under protest on behalf of the defendant and object to the jurisdiction of the court over the person of the defendant and the subject matter of this cause for the reasons and upon the grounds set forth in the demurrer, the amended demurrer to the petition herein and also as set forth in the defendant's answer.

Be it remembered, that on the hearing of the above entitled cause before Hon. George B. Okey, referee, pursuant to the order of reference heretofore made herein, the plaintiff, to maintain the issues on his part to be maintained, introduced and offered in testimony on his behalf the following evidence, to wit:

Mr. Bennett: Here is a deposition in the Langdale case No. 73527, which I ask the referee to open and mark as opened.

Mr. Bennett: I now offer the original certificate in the Langdale case, consisting of four pages, and ask that it be marked as Exhibit "A."

And thereupon the paper last above offered was marked for the purpose of identification as Exhibit "A" and is hereto attached, so marked and made part hereof.

Mr. Bennett: I now offer the deposition of George D. Frey, who at the time of the taking of the deposition resided in the city of Columbus, Ohio, but since said time, as I am advised, has become a non-resident. I would suggest that the deposition be not read at length but that the objections and exceptions thereto be argued at length when we come to the presentation of the case.

Mr. Game: Since the deposition is not read the defendant objects
103 to questions and answers Nos. 7 to 72, both inclusive for the reason and upon the grounds that the same are incompetent, immaterial and irrelevant. This objection is to be noted to each question and answer.

And thereupon the above deposition was marked for the purposes of identification as Exhibit "B" and is hereto attached, so marked and made part hereof.

Mr. Bennett: Your Honor, I am seeking to cover the balance of my case by stipulation and I think it will be rather brief. I intend limiting it to a waiver of producing the company's receipts for these various assessments and to the further proposition that the payments made by the plaintiff upon said certificates were paid by him to maintain the insurance in force. All the rest I conceive to be questions of law as to whether he was justified in making the payments to continue his insurance in force, and I assume that will take some time for defendant's counsel to submit the question of a stipulation to the company's counsel and if that can be obviated by a stipulation I may be able to rest plaintiff's case at the next session. Otherwise I will have to produce my ancient parties, they are both in feeble health.

The Referee: Have you evidence of formal protest at the time of making the payments?

Mr. Bennett: No, I rely upon the construction of our contracts by the courts as matters of law, it having been expressly negatived by the opinions of courts of last resort to which I will call your Honor's attention later, that no power existed to change the amounts of the assessments unless by agreement of the parties. I will follow

104 that with proof, if the same is not stipulated, that after the decision of the courts on that point they sought to get the various parties to acquiesce in the larger assessments and in these specific instances they refused to acquiesce therein. That is already shown by the deposition but if it is necessary further we will have the printed blanks secured from the company's office.

Mr. Game: Since the depositions have been offered in the form that they have and the objections noted by the defendant the court necessarily can not make a ruling at this time.

The Referee: The referee reserves his decision with respect to the objections to the depositions and exceptions may then be taken to his ruling.

And thereupon the further taking of these depositions was adjourned until Monday, February 17, 1919, at 9:30 o'clock a. m.

Morning Session, March 27, 1919.

And thereupon the further hearing of this case was resumed pursuant to adjournment.

Present: Same parties by their counsel as at previous session.

And also GEORGE B. FREY, called on behalf of the plaintiffs, being first duly sworn, testified as follows:

Examined by Mr. Bennett:

Q. You are the same George D. Frey who has heretofore testified by deposition in this cause?

A. I am.

Q. You are acquainted with Robert Langdale of Loveland, Ohio?

A. Yes, sir.

105 Q. Did you call upon Mr. Langdale under authority from
The Hartford Life Insurance Company relative to his certifi-

cate?

A. I did.

Q. I hand you here a paper marked for the purposes of identifica-
Exhibit "C," and you may state to the referee what that is.

A. That is a letter from the vice president, Keeney.

Q. Vice president of what company?

A. Hartford Life Insurance Company, Hartford, Conn.

Q. Is he living?

A. As far as I know.

Mr. Bennett: The letter marked Exhibit "C" concerning which
the witness has testified is as follows:

Mr. Game: The defendant objects on the ground that the letter
is incompetent.

The Referee: The objection is overruled.

(Exception by the defendant.)

Mr. Bennett (reading):

"Hartford Life Insurance Company, Hartford, Conn.

Raymond G. Keeney, Vice President.

September 27, 1909.

M. George D. Frey,
2106 Indianola Avenue,
Columbus, Ohio.

DEAR SIR:

In case you meet certificate holders of this company who wish some
evidence of your authorization to represent the Hartford Life Insur-
ance Company in this special work which you are doing for us, you
can show them this letter, and I will state further that any certificate
holder can rely upon any statement or promise made by you the
same as if made by one of the officers of the company.

Very truly yours,

RAYMOND G. KEENEY,
Vice President."

Q. Under this letter of instructions state to the referee what you
did in relation to Mr. Langdale, the plaintiff in this action.

06 A. I called on Mr. Langdale in regard to changing his cer-
tificate and he objected.

Q. He objected to what?

A. To signing the slip in regard to changing his rate from \$2.68
\$4.

Q. Was the slip presented to him by you?

A. It was.

Q. I will ask you if Exhibit "A" attached to the depositions in this cause is a copy of the slip mentioned by you.

A. It is.

Q. Give as near as you can, Mr. Frey, the time that you saw the plaintiff and presented the slip concerning which you have testified.

A. I cannot give the exact dates.

Q. Well, what time relative to the date of the letter which has been marked Exhibit "C"?

A. About that time, about the date of the letter.

Q. Now, do you recall the time of the decision in the case known as the Dresser case against the Hartford Life Insurance Company decided by the Supreme Court of Connecticut?

Mr. Game: The defendant objects on the ground that it is incompetent, irrelevant and immaterial.

The Referee: The referee thinks for the purpose of ascertaining approximately the date in question the inquiry is competent and the objection is overruled.

(Exception by the defendant.)

A. I have that date. I can furnish it. I recall that.

Q. State whether it was after the decision in that case that the Hartford Life Insurance Company sent you the slips heretofore marked Deposition Exhibit "A."

(Same objection by the defendant; objection overruled; exception by the defendant.)

107 A. It was during that trial.

Q. Had the Hartford Life Insurance Company before that time presented any slips to you or to the other agents of the company like that marked Deposition Exhibit "A" for certificate holders to execute?

(Same objection by defendant; overruled; exception by defendant.)

A. No, sir.

Q. Now, Mr. Frey, state whether you saw Mr. Robert H. Langdale.

A. I did.

Q. What did you see him for?

A. In regard to signing that slip.

Q. Where did you see Mr. Langdale?

A. I met him at his office, Cincinnati.

Q. State whether it was relatively about the same time that you saw Mr. Douds.

A. To the best of my recollection it was about the same time.

Q. What was the business or profession of Robert H. Langdale?

A. Langdale was an attorney at law and he was administrator of that estate at this time. He was winding up the affairs of that estate.

Q. State whether he is still living.

A. He is.

Q. At Loveland, Ohio?

A. Near Loveland. Rural delivery is his address.

Q. State what the conversation was that occurred between you and Mr. Langdale, if any.

A. Well, Mr. Langdale would not sign and he took some time to deliberate over it, so I paid several visits to him.

Q. Were you then making Cincinnati your headquarters?

A. Cincinnati was my headquarters at that time.

108 Q. Did you afterwards return to Mr. Langdale's office and see him relative to signing Deposition Exhibit "A"?

A. I paid him some visits and he was absent on business; I did not get to see him. I do not just recollect the date of his return.

Q. What was the conversation that occurred between you?

A. It was in regard to the raising of his rates and he would not consent to it. That was about all we talked on, that line.

Q. Well, what expression did he use or what conversation did you have with him relative to the increased assessment and his payment of the same?

A. Well, he would pay it as long as he was able, he would have to pay it under protest as long as he was able to keep it up, to keep his insurance in force.

Q. Did you afterwards make report to the Hartford Life Insurance Company of the results of your visits to these various certificate or policyholders?

A. I did on my return to the home office.

Q. What Home office?

A. Hartford, Conn.

Q. Did you go to Hartford, Conn.?

A. Made a number of trips to Hartford.

Q. To whom did you report?

A. Mr. Keeney.

Q. The vice president of the company?

A. Vice president of the company and also the president.

Q. Who was the president?

A. George E. Keeney.

Q. Which one was known as General Keeney?

A. George E., the president.

Q. State whether you had received a verbal authority or direction from General Keeney, the president, in addition to that contained in the letter of the vice president.

99 Mr. Game: The defendant objects because it is already covered in the deposition and is repetition.

(Objection overruled; exception by defendant.)

A. I did.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by defendant.)

Q. I had not heretofore identified the two Keeneys. That is point. State generally, Mr. Frey, whether you saw all of the certificate holders or policyholders in the Hartford Life Insurance Company then residing in Ohio relative to this same slip marked Deposit Exhibit "A."

(Question objected to by the defendant as incompetent, irrelevant and immaterial.)

A. I did.

Mr. Bennett: It is the extent of his authority. I want to show whether he executed the commission.

The Referee: The referee doubts the competency of the inquiry.

Mr. Bennett: I will withdraw it, so the question and answer may be stricken from the record.

Cross-examination.

By Mr. Game:

Q. Where do you live, Mr. Frey?

A. 2320 North Fourth street, Columbus, Ohio.

Q. When did you leave the employ of the Hartford Life Insurance Company?

A. About three years ago. I was with the Hartford Life and Missouri State Life, worked between the two.

110 Q. How often have you seen Robert Langdale since 1909?

A. I have seen him five or six times.

Q. Do you know how many assessments he has paid on his policy since 1909?

A. I know he paid up until he was unable to pay any further. He had a loss and fire and he lost nearly everything he had; that is what he went out on his farm; he is now residing on his farm near Loveland.

Q. How did Mr. Langdale pay his assessments?

A. Paid them to the company; they all paid to the company.

Q. None of his assessments were paid to you?

A. I had no authority to collect them. No agent had.

Q. Do you know whether or not Mr. Langdale made any protest at the time he made his various payments to the company?

A. Mr. Langdale—I can recollect the date—claimed that he would pay as long as he was able to pay. He would have to do that to keep his insurance in force and he would pay under protest.

Q. Is that what he said to you or is that the information he communicated to the home office of the company?

A. That is what he said to me.

Q. So you have no knowledge of any communication made by Mr. Langdale to the company by way of protest on account of the increased assessments?

A. I suppose the company records would show you.

Q. I asked you whether you had any knowledge.

A. I have none.

Redirect examination.

By Mr. Bennett:

Q. Mr. Frey, I do not know whether I have asked you the entire length of your employment by the Hartford Life Insurance Company and the various capacities in which you represented them; will you give that?

A. I represented them in '83.

Q. 1883.

A. Yes, when these contracts were issued.

Q. Go on and state the various capacities?

A. I was with them I guess between six and seven years.

Q. What capacity?

A. As general agent for Ohio, southern Ohio; and then I left and went east went back to Wisconsin; from the east went to Wisconsin. And when I returned to Ohio General Keeney went for me in regard to these certificates and he wanted me to see these policyholders and see what I could do in regard to having them sign that slip. I was with him about seven years on that, I think.

Q. Then the total length of your employment, the total time was how long?

A. Altogether about 15 years.

Q. Now, Mr. Frey, state whether Mr. Langdale had any knowledge of any change in the certificate or policies held by him prior to the time that you presented the slip marked Exhibit "A" to him for his signature.

(Question objected to by the defendant as incompetent; objection overruled; exception by the defendant.)

A. He did not.

Q. Do you know, Mr. Frey, whether or not you were the first person to communicate to Mr. Langdale that the terms of his policy had been changed?

(Question objected to by the defendant as to form; objection overruled; exception by defendant.)

A. I was the first.

Q. Give the facts, if you have the knowledge, Mr. Frey, as to the separation by The Hartford Life Insurance Company of its old line business from its mutual business.

(Question objected to by defendant as incompetent and immaterial; objection overruled; exception by the defendant.)

A. The old line business was absorbed by the Missouri State Life. They were consolidated, rather, when Mr. Hoyt bought out General Keeney's interest—John G. Hoyt.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by the defendant.)

Q. What became of the mutual business; in what city was it transacted?

(Question objected to by the defendant; objection overruled; exception by the defendant.)

A. Hartford, Connecticut.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by the defendant.)

A. St. Louis, Missouri.

(And thereupon the defendant moved to strike out the above answer; motion overruled; exception by the defendant.)

And thereupon the further hearing of this case was adjourned until Thursday, April 4, 1919, at 9:30 o'clock a. m.

Morning Session, April 4, 1919.

And thereupon the further hearing of this cause was adjourned until April 10, 1919, at 9:30 o'clock a. m.

113

Morning Session, April 10, 1919.

And thereupon the further hearing of this cause was adjourned until Thursday, April 24, 1919, at 9:30 o'clock a. m.

Morning Session, April 24, 1919.

And thereupon the further hearing of this cause was adjourned until Thursday, May 1, 1919, at 9:30 o'clock a. m.

Morning Session, May 1, 1919.

And thereupon the further hearing of this cause was resumed pursuant to adjournment.

Present: Same parties as at previous sessions.

Mr. Bennett: We haven't got in evidence, I believe, that he reached the age of seventy-four on February 26, 1914.

With these receipts covering the period that is covered in Frey's deposition, not desiring to encumber the record with numerous receipts, will you permit one of them to be introduced as representative of all of them between quarterly calls 100 and 140?

Mr. Game: Defendant has no objection.

Mr. Bennett: The plaintiff now offers a paper marked Exhibit D, otherwise designated as "Special Notice of Quarterly Call No. 100" by the defendant company, and it is agreed that Exhibit D may be taken as similar in all respects except as to dates and amounts down to and including consecutive calls to call 141 of February 26, 1914, at which time plaintiff ceased paying.

And thereupon the paper writing last above offered was admitted in evidence on behalf of the plaintiff, and is hereto attached, marked Exhibit D, and made a part hereof.

114 Mr. Bennett: Plaintiff further offers original receipts signed by the defendant company, from quarterly call No. 100 to 142, inclusive, but without making the same a part of the record.

And thereupon the plaintiff rested.

Mr. Game: The defendant now moves that upon the evidence already offered that judgment be entered in its favor as prayed for in its answer.

(And thereupon the referee overruled the above motion of the defendant, to which ruling the defendant excepted.)

And thereupon the defendant rested.

Mr. Game: Defendant now renews its motion for a judgment in its favor upon the evidence already offered, and moves that plaintiff's petition be dismissed.

(Motion overruled; exception by the defendant.)

And the foregoing was all the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of the defendant on this trial of this cause.

Monday Morning Session, October 6, 1919.

And thereupon the further hearing of this matter was resumed.

Present: Same parties by their respective counsel as at previous sessions.

115 Mr. Bennett: Let the record show that the former entry showing that the plaintiff rests is set aside for the introduction of further testimony, and George D. Frey, who has heretofore been called and testified on behalf of the plaintiff, is recalled.

Mr. Game: To all of which the defendant objects and excepts.

GEORGE D. FREY, recalled as a witness on behalf of the plaintiff, testified as follows:

Examined by Mr. Bennett:

Q. Mr. Frey, you have heretofore testified orally in this case, haven't you?

A. I have.

Q. Also by deposition?

A. Yes, sir.

Q. And in your deposition have you set forth the computation of the amounts overpaid by the plaintiff on his contract?

A. I have.

Q. State whether at the time that you made the computation attached to your deposition you had and were familiar with the rule of the company in making such computation?

A. Yes, I had.

Q. Have you in your possession a report of the examination of the Safety Fund Department of the defendant company made by the Insurance Department of the state of Connecticut in 1906?

A. I have.

Q. Does such report contain a table showing the difference in the rates prior to 1885?

A. It does.

Q. Does it show the change of rates from 1885 to 1894?

A. It does.

Q. Does it show an entire new change of rates?

A. It does.

Q. After what year?

A. After 1884.

116 Q. 1894, you mean?

A. Yes, 1894.

For the purpose of identification I will have this marked Plaintiff's Exhibit E.

And thereupon the pamphlet marked "Report of an Examination of the Safety Fund Department of The Hartford Life Insurance Company by the Insurance Department of the State of Connecticut" was marked for the purposes of identification as Plaintiff's Exhibit E.

Q. Were you at the time of receiving this an agent of the defendant company?

A. At the time that was received?

Q. Yes.

A. No, I had served before and after.

Q. How long after this?

A. Very soon after that was received.

Q. The date?

A. That was received in 1906.

Q. The dates of your service in connection with the company have heretofore been given in your evidence, have they not?

A. I think they have; I am quite sure they have.

Q. You have heretofore given the conversations which you have had with the officers of the company concerning the change of rates, have you not?

A. I think so; as I recollect, I have.

Q. So as to advise the referee, if it has not heretofore been done, as to your method of making these computations, will you explain it by taking any one of the mortality calls?

A. I think I have the rule given by the secretary some place.

Q. Well, I am now asking about your method of computation. I hand you assessment number 111 on the policy of Mr. Langdale as typical of the others.

117 Mr. Bennett: Now, is that what the referee wanted to have brought out?

The Referee: More particularly the referee wanted whatever evidence the witness might have as to the mortality ratio actually used by the company.

Mr. Bennett: Yes.

The Referee: In his former testimony he gave it down to a certain point, but not down to the time of the death of the plaintiff Doud. The referee wanted any additional testimony, if he has it, as to the mortality ratios actually used by the company.

Mr. Bennett: Then my former question may be stricken out.

Q. In view of the request of the referee, I would ask if you have in the pamphlet referred to or otherwise the ratios used in the computation of the calls by the defendant company?

A. I have in this report.

Q. Just state the page of the report.

A. Pages 24 to 26.

Q. Down to what number of call is that extended?

A. Call 113.

Q. To what date?

A. To November 1st, 1906.

Q. Have you any further publication sent out by the company showing the ratios in addition to this shown on pages 24 to 26 of the exhibit referred to?

A. I have a slip here, issued by Secretary Lawrence, showing an additional call from 114 to 123, inclusive.

Q. Now, at the time you made the computation set forth in the exhibit attached to your deposition, did you follow the rule contained in these exhibits?

A. I did.

118 Q. I hand you a paper which, for purposes of identification, is marked Plaintiff's Exhibit F, and ask you what that is and where you received it.

And thereupon the card headed "The amount of each call in the Safety Fund Department is determined as follows," was marked for purposes of identification as Plaintiff's Exhibit F.

A. That is a copy sent out by Secretary Bacall in 1906.

Q. Did you resort to that in making the computation?

A. Yes, sir.

Mr. Bennett: I now offer in evidence the exhibit referred to as "Report of the examination of the Safety Fund Department" of the defendant company by the insurance department of the state of Connecticut in the following particulars:

The first nine pages thereof;

That portion thereof which is contained on pages 14 to 17, inclusive, under the heading, "The Safety Fund;" on page 14 and ending on page 17 with the subject "Administration of the Safety Trust Fund."

Also pages 24, 25 and 26, headed "Table D," on page 24, "List of Ratios," and ending with the words, "Women's divisions," on page 26.

Mr. Game: To the introduction of those parts of the exhibit just referred to by the plaintiff, the defendant objects upon the ground that they are incompetent, immaterial and irrelevant.

(And thereupon the referee overruled the above objection of the defendant, to which ruling of the referee the defendant excepted.)

119 And thereupon the portions of the exhibit above referred to were offered, introduced and admitted in evidence on behalf of the plaintiff, subject to the objection and exception of the defendant, and are in the words and figures following, to wit:

EXHIBIT "E."

Report of Examination.

State of Connecticut.

Office of the Insurance Commissioner.

Hartford, November 8, 1906.

An examination of the condition and affairs of the Safety Fund Department of the Hartford Life Insurance Company, under the authority conferred by Sections 3490 and 3531 of the General Statutes, was begun by this Department in June of this year. The complete results are submitted herewith.

The objects of this examination were (1) to consider briefly the corporate history of the company and its legal powers and duties in relation to its assessment business; (2) to describe and analyze the various kinds of Safety Fund or assessment policies in force and to ascertain whether the terms of these contracts had been rigorously complied with; (3) to investigate the mortality experienced by the company on its assessment policies; (4) to investigate the history of the administration of the Safety Fund by the trustee thereof since beginning in 1880; (5) to verify the financial statement of the Safety Fund Department made to the Insurance Commissioner for the year ended December 31, 1905; and (6) to consider generally such of the methods of business pursued in the company's Safety Fund Department as might seem advisable.

120 For the fourth purpose above mentioned, the Security Company, as trustee of the Safety Fund, placed its books and records at the command of the department examiners. All ledger entries pertaining to the Safety Fund, for the twenty-five years since its beginning, were abstracted and summarized.

In making this examination the department has had the assistance and advice of Mr. Clayton C. Hall, of Baltimore, Maryland, an actuary of over thirty-five years' experience in the active practice of the profession. Mr. Hall's report follows on page 3.

On page 28 will be found a supplementary report summarizing the results of an examination of the company's books and vouchers by a clerical force from this department.

This examination did not include the stock department of the company, which is doing a legal reserve business exclusively.

THERON UPSON,
Insurance Commissioner

Report of Clayton C. Hall, Consulting Actuary.

Baltimore, Md., October 29, 1906.

Hon. Theron Upson,
Insurance Commissioner,
Hartford, Conn.

SIR:

In compliance with your request I have taken part in the examination of the Safety Fund Department of the Hartford Life Insurance Company begun in June last, under your direction, by the examiners of your office, and recently completed.

121 The financial condition of the department of the company's business, together with the statement of receipts and disbursements for the year 1905, are fully shown in the statements which have been prepared for that purpose.

I respectfully submit the following report upon the subjects which were particularly referred to me for consideration. In order that a clear view of the subject may be presented, it is necessary to review briefly the corporate history of the company, the terms of the trust agreement under which the Safety Fund was established; the manner in which the fund has been administered, and the conditions contained in the policies or certificates of membership issued by the company to persons insured in the Safety Fund Department.

Corporate History.

The company was originally created under the name of the Hartford Accident Insurance Company, by resolution of the assembly at its session in 1866. Its charter was subsequently amended by resolutions adopted at sessions of 1867, 1868, 1879, 1882, 1897 and 1903, enlarging the powers of the corporation and changing its title successively to "Hartford Life and Accident Insurance Company," "Hartford Life and Annuity Insurance Company," and finally to "The Hartford Life Insurance Company," the name by which the corporation is now known and under which its business is conducted.

The only enactment amendatory to the charter of the company which it is necessary here to cite is Section 6 of the amendment approved May 22, 1867, which was amended by resolution approved April 25, 1882, to read as follows:

122 "Section 6. It shall be the duty of said company to reserve out of its receipts an amount sufficient to reinsure all its outstanding life

risks of whatever description other than mere accident risks and other than such contracts as it has made or may make wherein the sum payable upon the death of the person named in any such contract is made contingent upon an assessment collected from the associated holders of such contracts, said amount to be computed upon an assumption of mortality of the rates, known as the actuaries' or combined experience rates, and at a rate of interest of four per cent per annum; and such reserve shall be exempt from any liability for losses or claims arising from any general accident policy or contract insuring against death or disability caused by accident, and no dividend or interest shall be paid to either stockholders or policyholders by which payment said reserve would be reduced below the minimum amount required by the provisions hereof; provided, that the capital stock of the company shall be liable for all its contracts without exemption by reason of anything therein contained."

The Safety Fund System.

The theory of the Safety Fund System, which is unlike the plan upon which the business of all the other life insurance companies in Connecticut is conducted and in fact unlike that of any insurance company now in existence, can best be stated by quoting from the official publication of the company by which it was introduced.

In a "Manual" or "Agents' Hand Book" issued by the
123 Hartford Life and Annuity Company, and bearing the date 1893, the following words appear on page 13:

"In 1880 it (the company) adopted its popular and well known Safety Fund System of Insurance, which has been and is now so popular.

"The Safety Fund System of life insurance differs essentially from any other plan operated, either by company or association. It is a plan of pure insurance, avoiding the accumulation of a reserve fund beyond the point of necessity for absolute security to the policyholders, the only investment feature being that of the single payment of \$10.00 for each \$1,000.00 of insurance, made but once, to form the Safety Fund, which is held in trust for a specific emergency, and for the sale benefit of the policyholders."

Trust Agreement.

For the purpose of carrying into effect this Safety Fund System, an agreement was entered into between the Insurance Company and the Security Company of (Hartford, Connecticut), by which the latter became the trustee of the fund.

The essential features of the trust agreement, which is dated December 31, 1879, are contained in the following paragraphs which are quoted therefrom:

"Whereas, the party of the first part purposes to issue to persons contracting therefor, certificates of membership in a special depart-

ment of its business to be known as the Safety Fund Department,
and, in consideration of the sum of ten dollars to be received
124 on each one thousand dollars of the amount of each and
every such certificate for the purpose of creating a Safety
Fund, to insert therein sundry agreements with such persons in the
following words, to wit:

"That said company will deposit said sum of ten dollars, when
received, with the trustee, named in a contract made with it (of
which a copy is printed hereon), as a Safety Fund in trust for the
uses and purposes expressed in said contract; and shall at the ex-
piration of five years from July 1, 1879, if said Safety Fund shall
then amount to three hundred thousand dollars, or whenever there-
after said sum shall be attained, make a semi-annual division of the
net interest received therefrom by it, pro rata among all the holders
of certificates in force in said department at such times, who shall
have contributed five years prior to the date of any such division
their stipulated proportion of said fund, by applying the same to
the payment of their future dues and assessments; and that, when-
ever said fund shall amount to one million dollars, all subsequent
receipts therefor shall be divided by the said company in like
manner as the interest.

"Said company further agrees that if at any time, after said fund
shall have amounted to three hundred thousand dollars, or after five
years from January 1, 1880, if that amount shall not have been
attained before that date, it shall fail by reason of insufficient mem-
bership or shall neglect if justly and legally due, to pay the maxi-
mum indemnity provided for by the terms of any certificate issued
125 in said department, and such certificate shall be presented for
payment to said trustee by the legal holder thereof, accom-
panied by satisfactory evidence, as hereinafter provided, of its
failure to pay, after demand upon it within the time herein stipu-
lated for limitation of action, then it shall be the duty of said trustee
to at once convert said Safety Fund into money and divide the
same (less the reasonable charges and expense for the management
and control of said fund) among all the holders of certificates then
in force in said department, or their legal representatives, in the
proportion which the amount of each of their certificates shall bear
to the amount of the whole number of such certificates in force;
and that in such event it shall file with said trustee a correct list,
under oath, of the names, residences, and amounts of the certificates
of all members entitled to participate in such division. The evi-
dence referred to above to be either certification by said insurance
company's president or secretary that a claim is justly and legally
due and that payment thereof has been demanded and refused, or
the duly attested copy of a final judgment obtained thereupon in
any court of competent jurisdiction, satisfaction of which has been
neglected or refused for the period of sixty days from its date."

Among the obligations assumed by the Security Company, trustee,
are the following:

"That, as often as the sums composing such fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States bonds, said trustee shall make investment of such funds therein and register the same in its name as trustee of the Safety Fund of the said insurance company, and provided no default by the party of the first part as hereinbefore recited shall
 126 occur, shall accumulate said fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or until such time thereafter as said fund shall amount to three hundred thousand dollars, par value, of the bonds purchased for said fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said fund (less the accruing and unpaid compensation and expenses) to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements; and, unless such default shall occur, will thereafter add to the principal of said fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole fund shall amount in such bonds, at their par value, to one million dollars. And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said fund into money and divide the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained. Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper division thereof as agreed with its certificate holders."

"It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore cited agreements of the party of the first part with its certificate holders shall constitute the uses
 127 and purpose of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said insurance company, and the balance of said fund, if any, shall be paid over to the party of the first part."

In 1889 an act was passed by the General Assembly in relation to the investments of this fund as follows:

"Resolved, by this assembly, that the Security Company, a corporation located in Hartford, be and it is hereby authorized to invest the funds known as the Safety Funds, which it now holds or may hereafter receive from the Hartford Life and Annuity Insurance Company, a corporation also located in said Hartford, under a contract between said companies, dated the thirty-first day of December, 1879, in trust for the benefit and security of certain holders

of certificates of membership in said Hartford Life and Annuity Insurance Company, in such other securities, in addition to United States bonds, as the life insurance companies of this state are authorized to invest in, instead of being compelled to invest all said funds in United States bonds as specified in said contract; provided, such investments of said funds in other securities than United States bonds shall be made with the consent and approval of said Hartford Life and Annuity Insurance Company; and, provided further, that

128 nothing in this resolution shall be construed as in any way to vary, alter, or change the purposes, conditions or stipulations of such trust as set forth in said contract, except as to the kind of securities in which the same may be invested."

Policy Contracts.

The policies issued in the Safety Fund Department differ widely in form.

The old "certificates of membership," in use in 1880 and afterwards, contained a provision as follows:

"An assessment for as many dollars as there shall be similar certificates in force in said department at the date of such death shall be made upon the holders thereof according to the table of graduated assessment rates, given hereon, as determined by their respective ages when assessed, and the sum collected thereon * * * shall be paid to —, * * * Provided, however, that in no case shall the payment upon this certificate in the event of such death exceed one thousand dollars."

Beneath the "Table of Graduated Assessment Rates" given on the back of the certificate is printed the following:

"These rates will decrease as the certificates in force increase above one thousand in number."

It is said by the present officers of the company that these statements were based upon an hypothesis that a separate assessment would be levied for each death.

From about 1885 to 1894 it seems to have been provided in all policies that the assessments paid should form a mortuary fund, and that the "indemnity" should be payable from that fund only.

129 Under contracts so worded the liability of the company is evidently limited by the sufficiency of the mortuary fund, so formed, and extends no further.

In the forms of policy contract adopted in 1894, and all in use since that year, the amount of the indemnity has been expressed as a definite sum and a direct liability of the company. The liability of the policyholder to pay such mortality contributions as may be levied in the manner prescribed in the policy, is distinctly expressed, but it is nowhere stated that the liability of the company is limited by the results of such levies or assessments or the sufficiency of any mortuary fund. No such fund is mentioned.

Change of Rates.

Upon most of the forms of policy issued in the Safety Fund Department, but not all, there is printed a "table of rates" by which assessments for the mortality fund or for mortuary claims, are to be levied according to the attained age of the policyholder. In the year 1894, it having been recognized that the rates previously in force did not fairly represent the distribution of mortality actually experienced by the company at the several ages of life, a new table of rates was adopted as the basis of assessment for all policies issued from and after the date of its adoption.

130 The old rates and those adopted in 1894 are as follows:

| Ages. | Old rate. | New rate. |
|-------------|-----------|-----------|
| 15-21 | \$0.65 | \$0.74 |
| 22 | .69 | .76 |
| 23 | .71 | .77 |
| 24 | .73 | .78 |
| 25 | .75 | .79 |
| 26 | .77 | .80 |
| 27 | .79 | .81 |
| 28 | .81 | .83 |
| 29 | .83 | .84 |
| 30 | .85 | .86 |
| 31 | .88 | .87 |
| 32 | .91 | .89 |
| 33 | .94 | .91 |
| 34 | .97 | .93 |
| 35 | 1.00 | .95 |
| 36 | 1.03 | .97 |
| 37 | 1.06 | .99 |
| 38 | 1.09 | 1.01 |
| 39 | 1.12 | 1.04 |
| 40 | 1.14 | 1.06 |
| 41 | 1.16 | 1.09 |
| 42 | 1.18 | 1.13 |
| 43 | 1.20 | 1.17 |
| 44 | 1.22 | 1.21 |
| 45 | 1.25 | 1.25 |
| 46 | 1.30 | 1.30 |
| 47 | 1.35 | 1.40 |
| 48 | 1.40 | 1.50 |
| 49 | | |
| 131 | | |
| 50 | 1.47 | 1.50 |
| 51 | 1.54 | 1.60 |
| 52 | 1.63 | 1.70 |
| 53 | 1.72 | 1.80 |
| 54 | 1.81 | 2.00 |
| 55 | 1.92 | 2.10 |

| Ages. | Old rate. | New rate. |
|----------|-----------|-----------|
| 56 | 2.03 | 2.31 |
| 57 | 2.15 | 2.47 |
| 58 | 2.32 | 2.64 |
| 59 | 2.50 | 3.03 |
| 60 | 2.68 | 3.47 |
| 61 | 2.86 | 3.94 |
| 62 | 3.08 | 4.43 |
| 63 | 3.30 | 4.96 |
| 64 | 3.65 | 5.56 |
| 65 | 4.00 | 6.24 |

It is to be observed that the changes made, in this effort to adjust the rates more nearly to actual experience, were quite radical. From ages 15 to 31 the new rates are higher than the old; from ages 32 to 45 they are lower; while from age 46 and over the new rates are not only higher than the old, but the increase from year to year is rapid, until for age 65 and over the new rate of assessment is \$6.24 as compared with \$4.00 under the old, or an advance of more than 50 per cent upon the "rating" under the latter.

The method of assessment under these policies is expressed in the conditions printed thereon as follows:

"On the first day of March, June, September and December in every calendar year, after date hereof, there shall be due and payable (less such semi-annual distributions as shall be made hereon of the interest and surplus from the said Safety Fund) such mortality contributions as shall be levied and called hereon upon the rating of this policy in column 1 of the table of mortality rates printed hereon at the then respective age of the member, according to the ratio which the total like rating of all policies in the same department (after making due allowance for lapses) shall bear to the aggregate matured indemnity fixed upon by the company to be met," etc.

This language would seem to require that the "ratio" so-called should be applied to a uniform "rating" for all members of the same department; but as to the ratios in fact applied to the "rating" printed on the policy it is evident that the actual contributions levied upon persons holding policies issued in 1894 and subsequent years differ materially from the assessments upon persons of the same age holding policies of earlier issues. But any readjustment of the method of levying the assessments so as to make them uniform, even if desirable, would apparently be inconsistent with the terms of the contracts, and impracticable.

The terms "rate," "ratings," and "ratios" have been used in different senses in different policy forms issued by the company; but the meaning now attached to the several terms, and the manner in which the amounts of assessments are determined are explained by the company in a circular of which the following is a copy:

"The amount of each call in the Safety Fund Department is determined as follows:

133 By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as published on the back of the certificate at the attained age of each member whose certificate is in force, is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved due allowance being made for lapses. The rate increases with advancing age each year up to age 65. Beyond that age the increase is caused wholly by an increase of the ratio."

The Safety Fund.

This fund was created, as the quotations from the agreement with the trustee and the conditions contained in the policies show, by contributions from the policyholders of \$10.00 for each \$1,000 of insurance.

In the manual already quoted it is stated (page 13) that the fund is held in trust "for the sole benefit of the policyholders."

And again on page 15, that

"* * * it is provided in the system and its contracts that should the amount of insurance fall below one million the trustees of the fund shall, upon proper notification, divide the fund among the remaining policyholders, changing the whole life policies to mature endowments, to meet the full face value of which the fund would be ample."

No such agreement is to be found either in the trust agreement or the policy-contracts.

134 It is provided, however, that in the event of the refusal or failure of the company

"* * * to pay the maximum indemnity provided for by the terms of any certificate issued in said department and such certificate shall be presented for payment to said trustee by the legal holder thereof * * * it shall be the duty of said trustee to at once convert said Safety Fund into money and divide the same (less reasonable charges and expenses for the management and control of said fund, among all the holders of certificates then in force in said department)."

The evidence required of default having been committed by the company is either a certificate from its president or secretary that the claim is justly and legally due and that payment has been demanded and refused (which would be practically equivalent to a confession of insolvency) or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction.

In the conditions printed on the policies it is stated that

"* * * this policy or certificate of membership is issued in a special department known as the Safety Fund Department and participates in all the benefits of the trustee's contract which is printed hereon and referred to and made a part hereof with the same effect as if recited in full in this condition. And if any final distribution of said safety fund shall be ordered as provided for therein, said distribution shall be in lieu of payment hereunder and all liability of the company shall cease in respect of this contract."

135 The amount of the Safety Fund (men's division) is about \$1,000,000.00. The amount of insurance outstanding in the department is reported to be about \$40,000,000.00 so that if a distribution of the fund were ordered and made there would be a dividend of about \$25.00 upon each \$1,000.00 of insurance, and the holders of matured claims would in this event be treated precisely like the holders of running policies.

If the liability of the company upon these policies is in fact limited to the amount of the Safety Fund, and the obtaining of a judgment would result in the distribution of the fund, giving the holder in effect merely a right to receive his distributive share in the Safety Fund, then a judgment of \$1,000.00 would at this time be satisfied by the payment of \$25.00 and the business of the department would be terminated and its policies canceled. But it has already been pointed out that while policies which are to be paid out of a particular "mortality fund" only, are obviously limited by the sufficiency of that fund, the greater number of the policies issued in the Safety Fund Department contain no such limitation.

The amendment to the company's charter, made April 25, 1882, requires the maintenance of a regular reserve upon all life policies other than mere accident risks, and contracts on which the sum payable "is made contingent upon an assessment collected." And it further provides "that the capital stock of the company shall be liable for all its contracts without exception by reason of anything herein contained."

The policies issued in the Safety Fund Department do provide for assessments regulated according to the attained age and therefore, according to the theory of assessment insurance, the value of the future unpaid premiums would at all times be equal to and fully offset the value of the insurance outstanding. But the payment of the indemnity is not made contingent upon the collection of any assessment, except in those cases where they are payable out of a "Mortality Fund" only. Otherwise they are unequal obligations of the company. These contracts are to be distinguished from those of the Massachusetts Safety Fund Association (147 Mass. 363, 367), where the obligation assumed was not to pay an indemnity, but to levy an assessment for the purpose.

136 The sum of ten dollars for each one thousand dollars of insurance required to be paid for the creation of the Safety Fund was in no sense an assessment. It was a stipulated sum in consideration of which the policyholders became entitled to, as recited in the policies, participation in all benefits of the trustee's contract."

These benefits consist, so far as the policyholders are concerned, in a distributive share in the interest on the invested fund, and after the sum of \$1,000,000.00 had been obtained, in the distribution of the contributions which the new members might make toward its creation. As the company ceased issuing policies upon the assessment plan in 1899 no new contributions (except some deferred installments on old policies) come in, and the interest revenue is about \$40,000.00 or 4 per cent upon the principal yearly, admitting of a dividend of about \$1.00 on each \$1,000.00 of insurance.

It is distinctly provided in the trust agreement that after all certificates issued in the Safety Fund Department "have been
137 legally settled and surrendered to it or properly canceled
* * * the balance of said fund, if any, shall be paid over to the * * *" company. That is to say, according to the letter of the trust agreement embodied in the policy contracts, the policyholders have no interest in or title to the corpus of the fund except in the event of its distribution as already described. Otherwise it inures wholly to the stockholders.

As to the causes which led to the discontinuance by the company in 1899 of issuing new policies in the Safety Fund Department, it is claimed by the company that on account of the general distrust of the assessment plan which had arisen, and consequent restrictive legislation, its further conduct had become impossible. At a hearing before the insurance committee of the legislature in April, 1905 it was stated by the counsel for the company, that "they stopped because legislation in the different states was hostile."

At the same hearing the president of the company said:

"Regardless of the facts, the gentlemen say the company could go on. I say they could not * * *. All we could get were practically people who worked in shops among whom the mortality is very much higher. It meant the mortality would have gone so high it would have wrecked us."

In a circular issued to certificate holders under date of May 22, 1906, and bearing the signatures of both Hon. George E. Keeney, then president, and Mr. Charles H. Bacall, the secretary, it is stated as follows:

"The company was forced to discontinue the issue of Safety Fund certificates because of the revulsion of public sentiment against assessment insurance, and the consequent hostile legislation."

138

TABLE D.

List of Ratios in the Calls of the Safety Fund Department of the Hartford Life Insurance Company, Beginning June 10, 1888, This Assessment Being Designated as No. 4.

The first three assessments were made in the Mutual Benefit Association. In every case the ratio given is that levied upon the general body of the members. In every assessment up to the discontinu-

ance of the issue of Safety Fund Certificates this ratio was modified in the case of those members who had not been in the company a full year.

Men's Division.

| Call No. | Ratio. | Date issued. |
|----------|--------|---------------------|
| 4..... | \$0.81 | June 10, 1880. |
| 5..... | 1.12 | September 6, 1880. |
| 6..... | 1.34 | November 20, 1880. |
| 7..... | 1.15 | February 1, 1881. |
| 8..... | 1.81 | March 29, 1880. |
| 9..... | 1.50 | June 3, 1881. |
| 10..... | 1.45 | September 20, 1881. |
| 11..... | 1.60 | November 5, 1881. |
| 12..... | 1.60 | January 11, 1882. |
| 13..... | 1.70 | March 20, 1882. |
| 14..... | 1.65 | June 17, 1882. |
| 15..... | 1.36 | September 7, 1882. |
| 16..... | 1.22 | November 27, 1882. |
| 17..... | 1.70 | February 10, 1883. |
| 18..... | 1.65 | April 25, 1883. |
| 19..... | 1.55 | July 17, 1883. |
| 20..... | 1.36 | September 29, 1883. |
| 139 | | |
| 21..... | 1.23 | November 27, 1883. |
| 22..... | 1.65 | February 1, 1884. |
| 23..... | 1.55 | May 1, 1884. |
| 24..... | 1.40 | August 1, 1884. |
| 25..... | 1.65 | November 1, 1884. |
| 26..... | 1.65 | February 1, 1885. |
| 27..... | 1.72 | May 1, 1885. |
| 28..... | 2.05 | August 1, 1885. |
| 29..... | 2.03 | November 1, 1885. |
| 30..... | 2.05 | February 1, 1886. |
| 31..... | 2.03 | May 1, 1886. |
| 32..... | 2.15 | August 1, 1886. |
| 33..... | 2.10 | November 1, 1886. |
| 34..... | 2.10 | February 1, 1887. |
| 35..... | 2.10 | May 1, 1887. |
| 36..... | 2.10 | August 1, 1887. |
| 37..... | 2.10 | November 1, 1887. |
| 38..... | 2.10 | February 1, 1888. |
| 39..... | 2.10 | May 1, 1888. |
| 40..... | 2.10 | August 1, 1888. |
| 41..... | 2.10 | November 1, 1888. |
| 42..... | 2.10 | February 1, 1889. |
| 43..... | 2.10 | May 1, 1889. |
| 44..... | 2.10 | August 1, 1889. |
| 45..... | 2.10 | November 1, 1889. |

| Call No. | Ratio. | Date issued. |
|----------|--------|-------------------|
| 46..... | 2.10 | February 1, 1890. |
| 47..... | 2.10 | May 1, 1890. |
| 48..... | 2.10 | August 2, 1890. |
| 49..... | 2.52 | November 1, 1890. |
| 50..... | 2.40 | February 1, 1891. |
| 140 | | |
| 51..... | 2.25 | May 1, 1891. |
| 52..... | 2.25 | August 1, 1891. |
| 53..... | 2.20 | November 1, 1891. |
| 54..... | 2.20 | February 1, 1892. |
| 55..... | 2.20 | May 1, 1892. |
| 56..... | 2.20 | August 1, 1892. |
| 57..... | 3.30 | November 1, 1892. |
| 58..... | 2.20 | February 1, 1893. |
| 59..... | 2.20 | May 1, 1893. |
| 60..... | 2.20 | August 2, 1893. |
| 61..... | 2.20 | November 1, 1893. |
| 62..... | 2.25 | February 1, 1894. |
| 63..... | 2.25 | May 1, 1894. |
| 64..... | 2.25 | August 1, 1894. |
| 65..... | 2.25 | November 1, 1894. |
| 66..... | 2.25 | February 1, 1895. |
| 67..... | 2.61 | May 1, 1895. |
| 68..... | 2.40 | August 1, 1895. |
| 69..... | 2.40 | November 1, 1895. |
| 70..... | 2.40 | February 1, 1896. |
| 71..... | 2.40 | May 1, 1896. |
| 72..... | 2.40 | August 1, 1896. |
| 73..... | 2.40 | November 1, 1896. |
| 74..... | 2.40 | February 1, 1897. |
| 75..... | 2.40 | May 1, 1897. |
| 76..... | 2.40 | August 1, 1897. |
| 77..... | 2.40 | November 1, 1897. |
| 78..... | 2.50 | January 30, 1898. |
| 79..... | 3.00 | May 2, 1898. |
| 80..... | 3.00 | August 2, 1898. |
| 141 | | |
| 81..... | 3.00 | November 1, 1898. |
| 82..... | 3.00 | February 1, 1899. |
| 83..... | 3.00 | May 1, 1899. |
| 84..... | 3.00 | August 2, 1899. |
| 85..... | 3.00 | November 1, 1899. |
| 86..... | 3.00 | January 30, 1900. |
| 87..... | 3.00 | May 2, 1900. |
| 88..... | 3.25 | August 2, 1900. |
| 89..... | 3.25 | November 1, 1900. |
| 90..... | 3.25 | January 30, 1901. |

| Call No. | Ratio. | Date issued. |
|----------|--------|-------------------|
| 91..... | 3.25 | May 2, 1900. |
| 92..... | 3.60 | August 2, 1901. |
| 93..... | 3.35 | November 1, 1901. |
| 94..... | 3.80 | January 30, 1902. |
| 95..... | 3.80 | May 2, 1902. |
| 96..... | 3.75 | August 2, 1902. |
| 97..... | 3.25 | November 1, 1902. |
| 98..... | 3.25 | February 1, 1903. |
| 99..... | 3.25 | May 2, 1903. |
| 100..... | 3.25 | August 2, 1903. |
| 101..... | 3.80 | November 1, 1903. |
| 102..... | 3.30 | February 1, 1904. |
| 103..... | 3.80 | May 2, 1904. |
| 104..... | 3.80 | August 2, 1904. |
| 105..... | 3.60 | November 1, 1904. |
| 106..... | 3.60 | February 1, 1905. |
| 107..... | 3.80 | May 2, 1905. |
| 108..... | 3.60 | August 2, 1905. |
| 109..... | 3.80 | November 1, 1905. |
| 110..... | 3.80 | February 1, 1906. |
| 111..... | 3.50 | May 1, 1906. |
| 112..... | 3.75 | August 1, 1906. |
| 113..... | 3.20 | November 1, 1906. |

142 Mr. Bennett: Plaintiff next offers the continuation of the calls and ratios as shown by Plaintiff's Exhibit F, being from call 113 to 123, inclusive.

Mr. Game: To the introduction of which the defendant objects upon the grounds that it is incompetent, irrelevant and immaterial.

(And thereupon the referee overruled the above objection of the defendant, to which ruling of the referee the defendant excepted.)

And thereupon the portion of the exhibit above offered was introduced and admitted in evidence on behalf of the plaintiff, subject to the objection and exception of the defendant, and is in the words and figures following, to wit:

"The amount of each call in the Safety Fund Department is determined as follows:

By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as illustrated in the table of graduated assessment rates on the back of the certificate, at the attained age of each member whose certificate is in force, is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with advancing age each year up to

the age of 65. Beyond that age the rate for the age does not increase, and any variation in the assessment is due to a variation in mortality.

T. F. LAWRENCE,
Secretary.

143

| Call No. | Date. | Ratio. |
|----------|-----------------|--------|
| 113. | Nov., 1906..... | \$3.20 |
| 114. | Feb., 1907..... | 3.50 |
| 115. | May, 1907..... | 3.55 |
| 116. | Aug., 1907..... | 3.20 |
| 117. | Nov., 1907..... | 3.00 |
| 118. | Feb., 1908..... | 3.20 |
| 119. | May, 1908..... | 3.80 |
| 120. | Aug., 1908..... | 3.60 |
| 121. | Nov., 1908..... | 3.30 |
| 122. | Feb., 1909..... | 3.80 |
| 123. | May, 1909..... | 3.80 |

Mr. Bennett: Now, I have not got that down to the date of the last assessment in the Doud case, that is, by any of the exhibits sent out by the company, but I have covered that by the witness having pursued the same method of computation with kindred ratios arrived at by the same rule in making the computations that have been brought down to the date of the last assessment in the Doud case, and to the date of the last assessment preceding the bringing of the suit in the Langdale case.

Mr. Bennett: I now desire to offer in evidence plaintiff's Exhibit G, heretofore identified by the witness, Frey, in the language following:

You can always satisfy yourself that you are assessed in accordance with your policy contract. If you will bear in mind that the rate at age 60 is \$2.68, dividing this rate into the amount of your assessment will give you the ratio or number of times the rate. The ratio in the current call is 3 50/100. Multiplying this by \$2.68
144 we have \$9.38 as the assessment on \$1,000.00; \$93.80 the assessment on \$10,000.00.

Which, as made applicable to the amounts of the policies in the cases at bar, would be \$3,000.00 each.

Q. Now, Mr. Frey, in asking you a question a while ago as to whether you followed a certain rule, I will ask you again, having heard this rule read into the record by counsel for plaintiff, to state to the referee whether you followed that in making the——

A. That is the only rule I had from the company.

Q. In making the computation attached to your deposition as Exhibit B?

A. That is the only one I had to follow.

Q. And you did follow it?

A. Yes.

Mr. Bennett: I will ask him one more question.

Q. Will you be able to take the same rule and add to Exhibit B, being your computations, the amounts of the additional calls down to the last one paid by Doctor Doud prior to his death and the last one paid by Mr. Langdale prior to the commencement of this action?

A. Applied to all of them.

The Referee: I do not think he understood the question yet.

Q. The question is, in the Doud case your computation only extended to call 152, being made in September, 1916?

A. In the Doud case 161.

Q. This is the Doud case—152. Can you make the additional computation under similar rule under which you have computed this of the additional calls down to the last call paid by Doctor Doud?

A. Yes, sir.

145 Q. For that purpose will it be necessary for you to have the calls before you?

A. No. It will be necessary to have the calls before me in computing the ratio—that is, the quarterly call issued by the company.

The Referee: I suppose he meant yes.

Mr. Bennett: I will undertake to get you the additional calls so that these computations may be made, if accepted by the referee.

Q. Now, in the exhibit attached to your deposition in the Langdale case, you have made computations of the amounts down to quarterly call 142, being in the month of March, 1914. I will ask you whether you can extend the computations under similar rule down to the last call prior to the commencement of this action?

A. I can.

Q. Referring to the Langdale action. I will request you, therefore, to consider yourself under oath and make the computations required and hand them to the referee.

A. Yes.

Mr. Bennett: Do you want to object?

Mr. Game: No, I think not. You are usurping the function of the referee, probably.

The Referee: The referee assumes that the witness has no information in the form of data from the company showing the ratios that were actually used after call 123, May, 1909, but that the ratios which he proposes to furnish after that date are matters of computation.

Mr. Game: Just a minute. If that is the understanding, then the defendant objects, because there is no evidence what the ratios are. I assumed you had the ratios here and were going to make the computation.

146 Q. Adopting the inquiry of the referee heretofore made, I will ask you if you can make the computations showing the ratios under the rule adopted by the company, so as to show to the referee the ratio as well as the amount?

A. I can show the ratio to the amount of the quarterly call. I can show you the figures—the way the company got at it, by taking the

number of deaths, the amount of insurance in force, what it would be necessary to call on these members to make up this quarterly call, and then multiplying this ratio by the rate would give you the amount necessary, collecting the amount of the quarterly call. That gives you the ratio for the mortality, only the dues are fixed and that leaves that out.

Q. It leaves out of account the amount of the dues?

A. Yes.

Q. I will ask you then, for that purpose, is it necessary to have anything else than the quarterly calls that have been given to these members?

A. That is all, to strike the ratio that the company used.

The Referee: From that you can compute the number of deaths?

The Witness: No, you cannot, but they show the number of deaths on their call list.

Mr. Bennett: On each quarterly call. Will you have that read, "On each quarterly call?"

The Witness: Each quarterly call.

Mr. Bennett: Now, I wanted to give to the counsel and to the referee my idea before, why I did not introduce these separate calls. They would be cumbersome. But I did show that he used the calls to make the computations, and now we have reiterated that.
147 but should you insist that each call go in, of course, that would be cumbersome. But here is the result of it and the method arrived at.

The Referee: In order that the case may be entirely before the referee, it seems to me that the calls subsequent to number 123 should be in evidence.

The Referee: Let the record show that it is stipulated that the witness use the calls without their being formally introduced in evidence.

Mr. Game: He may make a tabular record of the calls, without offering the calls themselves.

The Referee: Subsequent to call number 123.

The Witness: On some, but not all, of these we have the call; not all, but it will apply because they are all the same age.

Mr. Bennett: Let the results of his computations be handed to the referee.

Mr. Game: I have no objection to handing them to the referee, but I could not, of course, accept his computations. I have no objection to his tabular work, but I do not think his computations should be made a part of the record.

Mr. Bennett: I understand the proposition to be that Mr. Frey will be permitted to make a chronological arrangement in tabular form of the calls in the same form as it has heretofore been made, attached as exhibits to his depositions, and that they shall be extended down to the respective dates heretofore referred to, namely, in

148 the Doud case, to the date of the last call paid by Doctor Doud, the plaintiff, and in the Langdale case according to the date set forth in the petition.

No cross-examination.

And thereupon the plaintiff rested.

Mr. Game: The defendant now renews its motion for a judgment in its favor upon the evidence already offered, and moves that the plaintiff's petition be dismissed.

And thereupon the referee overruled the above motion of the defendant, to which ruling of the referee the defendant excepted.

And thereupon the defendant rested.

And thereupon the defendant renewed its motion for a judgment in its favor upon the evidence already offered, and to dismiss the plaintiff's petition; motion overruled; exception by the defendant.

And the foregoing is all of the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of the defendant in this trial of this cause.

"EXHIBIT A."

Certificate of Membership.

Benefit Not to Exceed \$3,000.

No. 30031.

Safety Fund Department.

Age 40.

The

Hartford Life and Annuity Ins. Co.

of Hartford, Connecticut,

in consideration of the representations, agreements and warranties made by the applicant in the application herefor, and of the Admission Fee paid; and of the sum of Ten Dollars, to be paid to said Company, on each \$1,000 of the maximum indemnity herein provided for, to create a Safety Fund, as hereinafter described, and of Ten Dollars per annum on each \$1,000, for expenses, to be paid hereinafter conditioned and of the further payment, in accordance with the conditions hereof, of all Mortuary Assessments, does hereby issue this Certificate of Membership in its Safety Fund Department to Robert H. Langdale of Terrace Park, county of Hamilton, State of Ohio, with the following agreements: That said Company will deposit said sum of Ten Dollars, when received, with the Trustee, named in a contract made with it (of which a copy is printed hereon), as a Safety Fund in trust for the said and purposes expressed in said contract; and shall at the expiration of five years from July 1, 1879, if said Safety Fund shall amount to Three Hundred Thousand Dollars, or whenever thereafter said sum shall be attained, make a semi-annual division of the net interest received therefrom by it, pro rata among all the holders of Certificates in force in said Department at such times, who

shall have contributed, five years prior to the date of any such division their stipulated proportion of said Fund, be applying the same to the payment of their future dues and assessments; and that, whenever said Fund shall amount to One Million Dollars all subsequent receipts therefor shall be divided by the said Company in like manner as the interest. Said Company further agrees that if at any time, after said Fund shall have amounted to Three Hundred Thousand

Dollars, or after five years from January 1, 1880, if that
 150 amount shall not have been attained before that date, it shall fail by reason of insufficient membership, or, shall neglect if justly and legally due, to pay the maximum indemnity provided for by the terms of any Certificate issued in said Department and such Certificate shall be presented for payment to said Trustee by the legal holder thereof, accompanied by satisfactory evidence, as hereinafter provided, of its failure to pay, after demand upon it within the time herein stipulated for limitation of action, then it shall be the duty of said Trustee to at once convert said Safety Fund into money and divide the same (less the reasonable charges and expenses for the management and control of said Fund) among all the holders of Certificates then in force in said Department, or their legal representatives, in the proportion which the amount of each of their Certificates shall bear to the amount of the whole number of such Certificates in force; and that in such event it shall file with said Trustee a correct list under oath, of the names, residences and amounts of the Certificates of all members entitled to participate in such division. The evidence referred to above to be either certification by said Insurance Company's President or Secretary that a claim is justly and legally due and that payment thereof has been demanded and refused, or the duly attested copy of a final judgment obtained thereupon in any court of competent jurisdiction, satisfaction of which has been neglected or refused for the period of sixty days from this date. And said Company further agrees that

so long as any Certificate of Membership in the Safety Fund
 151 Department shall remain in force, said Fund shall be in no wise chargeable or liable for any use or purpose except as above mentioned.

Upon the death of the member aforesaid while this Certificate is in force, all the conditions hereof having been conformed to by said member, and on the receipt by the President or Secretary of said Company of satisfactory proofs of such death, an assessment shall be made upon the holders of all Certificates in force in said Department at the date of such death, according to the table of graduated assessment rates, given hereon, as determined by their respective ages and the number of such Certificates in force at the date of such death, and the sum collected thereon (less ten cents per each member assessed for cost of collection) shall be paid—provided, however, that in no case shall the payment upon this Certificate in the event of such death exceed One Thousand Dollars (less Fifteen Dollars as a post mortem contribution to said Safety Fund, if the deceased member shall not have fully contributed therefor as hereinbefore required, together with any balance due said Company) to his legal

representatives within ninety days after the receipt of such proofs, on presentation and surrender of this Certificate. All such payments to be made at the Home Office of said Company in lawful money of the United States.

And said Company further agrees that such Mortuary Assessment shall be in no wise chargeable or liable for any use or purpose other than for the payment of Death Claims, except as above mentioned.

This Certificate is Issued by the Company and Accepted by the Member Upon the Following Express Conditions and Agreements:

1. Application Made Part of Contract.—The application on the basis of which this Certificate issues is hereby referred to and made a part of this contract.

2. Of Payments.—The person to whom this Certificate is issued agrees to pay to said Company Three Dollars per annum for expenses on the first day of the month after date of issue, and at every anniversary thereafter, so long as this Certificate shall remain in force; and to pay by monthly or other pro rata installments of the same in advance of periods of less than a year. And also agrees to pay said Company, upon each Certificate that shall become a claim, an assessment in accordance with the Table of Graduated Assessment Rates, as printed hereon, within thirty days from day on which notice bears date. And further agrees to pay said Company the sum of Ten Dollars towards Safety Fund, within sixty days from the date of issue of this Certificate, which will entitle the holder hereof to all the advantages under said fund, as set forth in the agreement with the Trustees aforesaid, a copy of which is printed hereon and hereby made a part of this contract; all such payments to be made direct to said Company. But with the written permission of said Company attached hereto, said payment required to be made towards the Safety Fund, or any part thereof, may be postponed and made payable at such other times as shall be named in such permission:

And, while the whole or any portion of such payment shall remain unpaid, said Company may apply any sum standing to the credit of this Certificate towards such payment.

3. Conditions of Acceptance.—The holder of this Certificate further agrees and accepts the same upon the express condition that if either the monthly dues, assessments, or the payment of the Ten Dollars towards the Safety Fund, as hereinbefore required, are not paid to said Company on the day due, then this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid for protection while the Certification was in force, either from said Company or the Trustees of the Safety Fund; and that if a legal and just claim to benefit, under the terms of this Certificate, shall arise before said Safety Fund shall have accumulated to Three Hundred Thousand Dollars, before January 1, 1885, and the sum collected on the assessment shall be made in such event shall be paid over, as hereinbefore stip-

ulated; or such claim shall arise after said Fund shall have accumulated to said amount, or after January 1, 1885, and this Certificate shall be fully settled and surrendered; or if any final division from said Safety Fund, as hereinbefore provided, shall be made by the Trustee thereof on account of this Certificate, then, in such cases, all liability of said Company and of its Safety Fund, on account of this Certificate, shall cease.

4. Mode of Giving Notice.—A printed or written notice, directed to the address of the member, as it appears at the time on the books of the Company, and deposited in the post office at Hartford, 154 or delivered by an agent of the Company, shall be deemed a legal and sufficient notice for all purposes hereof. A transcript of the books of said Company, certified by the Secretary, showing such facts, shall be taken and accepted as conclusive evidence of the mailing of such notice, and of the facts aforesaid, as set forth in such transcript.

5. Change of Residence or Address.—In case of change of residence, post office address, occupation, or name of the member, or his or her legal representatives, it is agreed on the part of the member that notice thereof in writing shall at once be given to the Secretary of the Company. In case of failure to do so, the Company may proceed for all purposes as if no such change had been made.

6. Prohibitions.—If the member named in this Certificate shall be personally engaged in blasting, submarine operations, mining under ground, manufacturing poisonous or explosive chemicals, "breaking" or "coupling" on, and "making-up" of, railroad trains, trading or living among savage tribes or nations, or shall be engaged in military or naval service (except in time of peace) without, in each of these cases, having first obtained the written consent of said Company, or shall use alcoholic or narcotic stimulants so as to produce intoxication sufficient to impair his or her health, or to produce delir-um tremens, or to cause his or her death, or shall die by self-destruction—feloniously or otherwise—or while intoxicated, or from effects of drunkenness, or in consequence of a duel, or of keeping or visiting unlawful or disreputable resorts, or the violation or attempted violation of the laws of any Nation, State, Province or Municipality, or if there has been any concealment, 155 misrepresentation, or false statement or statement not true made in the application on which this Certificate issues, or if the conditions herein shall not be in all respects observed and performed by the party to whom this Certificate issues; then, and in all such cases, this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages, or the recovery of any moneys paid thereon.

7. Travel and Residence.—The member herein named is at liberty to travel by railroad, sea, lake, or river, by all trains, first-class steamers, or sailing vessels, and to visit or reside in any portion of

the world other than the residence named in the application herefor, where inhabited and civilized, and free from epidemics, wars, or internal dissensions.

8. Limitation of Action.—It is expressly understood and agreed that no action shall be maintained, nor recovery had, for any claim on or by virtue of this Certificate, after the lapse of one year from the death of said member; and if no suit or proceedings for such recovery be commenced within one year from the date of death of said member it shall be deemed a waiver, on the part of all parties concerned, of all rights or claims under or by virtue of this Certificate, and as conclusive evidence against the validity of such claim, and this Certificate shall be null and void, and of no effect, and no person shall be entitled to damages or the recovery of any moneys paid thereon. And it is further expressly agreed, in case any suit or proceeding shall be commenced for the recovery of any claim under this Certificate after the lapse of one year from the death of said member, or when the claim is otherwise illegal or fraudulent, that the person or persons so commencing suit or proceeding, on failure to obtain judgment therefor, shall pay to said Company the sum of two hundred dollars, as its reasonable attorney's fees and damages, which sum shall be taxed as costs in the case, and shall be collected as other costs in the suit are collected.

9. Debts and Liens.—It is further agreed that this Certificate shall be charged with any and all amounts that may be owing from the member or beneficiary herein, or their assigns, to said Company at the time of the payment of this Certificate, and the Company reserves a lien thereon to secure the payment of any such indebtedness, and the right to deduct and withhold the amount of any such amount or indebtedness in payment thereof. And that in case any County, State, or Municipality in which the member of his legal representative may reside shall levy a tax to be paid by said Company on account of any moneys collected hereon, said member agrees to pay the amount of such tax to said Company in addition to the payments hereinbefore named, as part of the payments needed to keep this Certificate in force, upon notice and demand by said Company, either in connection with the payments of assessments and annual dues or otherwise, as said Company may from time to time elect.

10. Assignments.—This Certificate shall not be assigned or transferred, unless notice and copy of this assignment be given to said Company, nor, unless a claim hereunder, made by an assignee, be subject to proof of interest.

11. Powers of Agents.—Agents of the Company can not alter or vary any of the conditions of this Certificate, nor issue permits of any kind, and they are not authorized to make any indorsements thereon, nor to receive money or assessments, dues, or Safety Fund debts maturing and payable after the issue of this Certificate.

In Witness whereof, the said Hartford Life and Annuity Insurance Company have, by their President and Secretary, signed and

delivered this contract, at Hartford, Conn., this 4th day of May, one thousand eight hundred and eighty-two.

(Signed)

T. R. FOSTER,

[SEAL.]

President.

(Signed) W. A. COWLES,

Ass. Secretary.

(Agents of the Company are not authorized to make any indorsements on this certificate.)

Trustee's Contract.

This agreement, made and entered into this thirty-first day of December, A. D. 1879, by and between the Hartford Life and Annuity Insurance Company, a corporation organized under the laws of the State of Connecticut, and located in the City of Hartford in said State, party of the first part; and the Security Company, a like corporation also located at said Hartford, party of the second part; witnesseth:

158 Whereas, The party of the first part purposes to issue to persons contracting therefor, Certificates of membership in a special department of its business to be known as the Safety Fund Department, and, in consideration of the sum of ten dollars to be received on each one thousand dollars of the amount of each and every such Certificate for the purpose of creating a Safety Fund, to insert therein sundry agreements with such persons in the following words; to-wit:

"That said Company will deposit said sum of ten dollars, when" "received, with the Trustee, named in a contract made with it" "of which a copy is printed hereon), as a Safety Fund in trust" "for the uses and purposes expressed in said contract; and shall" "at the expiration of five years from July 1, 1879, if said Safety" "Fund shall then amount to three hundred thousand dollars, or" "whenever thereafter said sum shall be attained, make a semi-" "annual distribution of the net interest received therefrom by it," "pro rata among all the holders of Certificates in force in said de-" "partment at such times, who shall have contributed five years" "prior to the date of any such division their stipulated proportion" "of said Fund, by applying the same to the payment of their future" "dues and assessments; and that, whenever said Fund shall amount" "to one million dollars all subsequent receipts therefor shall be dis-" "tributed by the said Company in like manner as the interest."

"Said Company further agrees that if at any time, after said" "Fund shall have amounted to three hundred thousand dollars," "or after five years from January 1, 1880, if that amount"

159 "shall not have been attained before that date, it shall fail by" "reason of insufficient membership, or, shall neglect if and" "legally due, to pay the maximum indemnity provided for by the" "terms of any Certificates issued in said department, and such Cer-" "tificate shall be presented for payment to said Trustee by the legal"

"holder thereof, accompanied by satisfactory evidence, as herein-"
 "after provided, of its failure to pay, after demand upon it within"
 "the time herein stipulated for limitation of action, then it shall be"
 "the duty of said Trustee to at once convert said Safety Fund into"
 "money and distribute the same (less the reasonable charges and"
 "expenses for the management and control of said Fund) among"
 "all the holders of Certificates then in force in said department, or"
 "their legal representatives, in the proportion which the amount of"
 "each of their Certificates shall bear to the amount of the whole"
 "number of such Certificates in force; and that in such event it"
 "shall file with said Trustee a correct list, under oath, of the names,"
 "residences and amounts of the Certificates of all members entitled"
 "to participate in such division. The evidence referred to above to"
 "be either certification by said Insurance Company's President or"
 "Secretary that a claim is justly and legally due and that payment"
 "thereof has been demanded and refused, or the duly attested copy"
 "of a final judgment obtained thereupon in any court of competent"
 "jurisdiction, satisfaction of which has been neglected or refused for"
 "a period of sixty days from this date."

160 "And said Company further agrees that so long as any"
 "Certificate of membership in its Safety Fund Department"
 "shall remain in force, said Fund shall be in no wise chargeable or"
 "liable for any use or purpose except as above mentioned."

Now, Therefore, the party of the first part, in consideration of the covenants and agreements hereinafter contained on the part of the party of the second part and in accordance with its agreement with its Certificate holders, as hereinbefore recited, does hereby appoint the party of the second part Trustee as aforesaid and covenants and agrees with it and its successors in said trust to deposit with said Trustee, as soon as received, the sum of ten dollars on each thousand dollars of the amount of each and every Certificate of membership issued by it in the aforesaid department until said Fund shall amount to one million dollars, to be by said Trustee held in trust and accumulated as hereinafter agreed, and the income thereof, less the reasonable compensation and expense of said trust, to be paid over to the party of the first part, as hereinafter provided, to be used by the party of the first part in accordance with the hereinbefore recited agreements: And when said Trustee shall pay the income, as above, to the party of the first part, or, shall make any other payments from said Fund, as required by the terms hereof, the liability of said Trustee on the amount so paid shall cease; it being understood and agreed that said Fund belongs to the party of the first part, subject to the expressed trusts herein provided.

161 And the party of the second part, for itself and its successors, in consideration of such deposits and of a reasonable compensation for its services, and the necessary expenses of managing said trust, covenants and agrees with the party of the first part and its successors, and with each of the holders of the aforesaid Certificates that it will receive, hold, manage and dispose of all said deposits made with it by said Insurance Company, principal and in-

come, in accordance with the uses and purposes specified in the hereinbefore recited agreements of the party of the first part with its Certificate holders, and shall at all reasonable times exhibit to the party of the first part all the securities and investments composing said Trust Fund; and shall render true statements of the account of said funds and the income thereof to any person entitled to request the same by reason of an interest therein; said party of the first part hereby agreeing to keep the party of the second part correctly informed of the names, addresses, numbers and amounts of Certificates of all persons thus entitled.

That, as often as the sum composing such Fund shall be in amount sufficient to purchase one thousand dollars, par value, of United States Bonds, said Trustee shall make investments of such funds therein and register the same in its name as Trustee of the Safety Fund of the said Insurance Company, and, provided no default by the party of the first part as hereinbefore recited shall occur, shall accumulate said Fund and the income thereof (less the reasonable compensation and expenses), for five years from July 1, 1879, or

162 until such time thereafter as such Fund shall amount to three hundred thousand dollars, par value, of the securities purchased for said Fund, when the party of the second part will pay over to the party of the first part, semi-annually thereafter, all the further income from said Fund (less the accruing and unpaid compensation and expenses), to be by the party of the first part used for the purposes mentioned in the hereinbefore recited agreements: And, unless such default shall occur, will thereafter add to the principal of said Fund the deposits thereafter received from the party of the first part, exclusive of the income therefrom, until the whole Fund shall amount in such securities at their par value, to one million dollars: And in the event of the failure or neglect mentioned in the hereinbefore recited agreements, will convert said Fund into money and distribute the same in accordance with the hereinbefore recited agreements, as soon as can reasonably be done after the necessary information of the proper persons and their shares shall have been obtained: Said party of the first part hereby agreeing to put the party of the second part in possession of the information required for the making of a proper distribution thereof as agreed with its Certificate holders.

All payments required hereby to be made to the party of the first part to cease upon the aforesaid failure or neglect of the party of the first part: and all payments required herein to be made to the Certificate holders by the party of the second part to be made at the office of said Trustee or of the successor in said trust.

163 The necessary expenses connected with the management of said Fund shall be limited to the ordinary commissions for purchasing or selling and transfer or transmission of the hereinbefore mentioned securities, together with the cost of the stationery and postage used in replying to requests for information of the condition of said Fund and the actual cost of any judicial action needed to determine the legal status of said Fund: All other expenses to be included in and covered by such reasonable charge as shall be made

for the compensation of the trusteeship, to be determined by the amount of time and labor involved in the execution thereof.

It is hereby mutually understood and agreed by both parties hereto that all the hereinbefore recited agreements of the party of the first part with the Certificate holders shall constitute the uses and purposes of the trust expressed herein. And it is hereby further understood and agreed that at such time as it shall be shown that all Certificates of membership issued by the party of the first part in its Safety Fund Department, have been legally settled and surrendered to it, or properly canceled in accordance with their terms, it shall be held and considered that the uses and purposes of said trust have been fully accomplished by said Insurance Company, and the balance of said Fund, if any, shall be paid over to the party of the first part.

And it is further understood and agreed that if said party of the second part shall, for any cause, fail to perform its duties as such Trustee as hereinbefore specified, or if, by reason of financial embarrassment of the party of the second part, or other cause, it shall be deemed expedient to remove said trust from its hands, then a new Trustee may be appointed, by the mutual nomination of said Insurance Company, and the then Insurance Commissioner of the State of Connecticut, to succeed to said trust, with all the duties and obligations herein imposed upon said original Trustee, and said party of the second part shall surrender said Fund to such successor.

In Witness Whereof, the party of the first part has affixed hereunto the corporate seal of said Insurance Company and caused these presents to be signed by its President and Secretary.

And the party of the second part has hereto affixed its corporate seal and its President and Treasurer have hereunto set their hands.

Done in duplicate at Hartford in the State of Connecticut the day and year first above written.

[SEAL.]

HARTFORD LIFE AND ANNUITY
INS. CO.,

By E. H. CROSBY,
President, and
STEPHEN BALL,
Secretary.

[SEAL.]

SECURITY COMPANY,
By ROBERT E. DAY,
President, and
WILLIAM L. MATSON,
Treasurer.

Table of Graduated Assessment Rates for Death Losses for Every \$1,000 of a Total Indemnity of \$1,000,000.

| Age. | Rate. | Age. | Rate. | Age. | Rate. |
|--------------|--------|--------|--------|--------|--------|
| 15 to 21.... | \$0.65 | 35.... | \$0.97 | 48.... | \$1.35 |
| 22.... | .67 | 36.... | 1.00 | 49.... | 1.40 |
| 23.... | .69 | 37.... | 1.03 | 50.... | 1.47 |
| 24.... | .71 | 38.... | 1.06 | 51.... | 1.54 |
| 165 | | | | | |
| 25.... | .73 | 39.... | 1.09 | 52.... | 1.63 |
| 26.... | .75 | 40.... | 1.12 | 53.... | 1.72 |
| 27.... | .77 | 41.... | 1.14 | 54.... | 1.81 |
| 28.... | .79 | 42.... | 1.16 | 55.... | 1.92 |
| 29.... | .81 | 43.... | 1.18 | 56.... | 2.03 |
| 30.... | .83 | 44.... | 1.20 | 57.... | 2.15 |
| 31.... | .85 | 45.... | 1.22 | 58.... | 2.32 |
| 32.... | .88 | 46.... | 1.25 | 59.... | 2.50 |
| 33.... | .91 | 47.... | 1.30 | 60.... | 2.68 |
| 34.... | .94 | | | | |

These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting.

Received of The Hartford Life and Annuity Insurance Company, of Hartford, Conn., —, in full for all claims under this Certificate, No. —, on the life of — — —, deceased.

_____,
Beneficiary.

_____,
Beneficiary.

Witness:

_____.
_____.

(Back of Policy.)

This Company has no agents authorized to receive money on Assessments, Dues, or Safety Fund.

66

No. 34501.

Safety Fund Department.

Certificate of Membership.

Benefit Not to Exceed \$3,000.

Issued by The

Hartford Life and Annuity Insurance Co.,

Hartford, Conn.

Name, Robert H. Langdale.
Agent, B. F. Coon.

Read carefully all the conditions of this certificate.

No person should be a party to a contract without knowing all its conditions.

After an Agent has delivered this Certificate, and collected the Admission Fee, no other payment connected with the indemnity under this Certificate must be made to the agent without the production of a receipt signed by the Company's Secretary.

Always give number of this certificate in writing to home office.

Know All Men by These Presents, That the undersigned beneficiary— named in the within Certificate, issued to ——— in consideration of — have sold, assigned and conveyed to ———, of —, County of —, State of —, and to his heirs and assigns forever, all — right, title, and interest in the within Certificate of Membership, subject to the terms and conditions thereof.

I hereby constitute the said assignee or assignees its attorney, in my name, but to his own use, to take all legal measures which may be proper to keep in force said Certificate and finally collect all amounts due and to become due thereunder, with power of substitution.

Witness my hand and seal this — day of —, 18—.

— —. [SEAL.]

If more than one beneficiary, they can sign below.

"EXHIBIT D."

Special Notice of Quarterly Call No. 100.

Hartford Life Insurance Co., Hartford, Conn.

R. H. Langdale,
N. E. Cor. 4th and Walnut St.,
Room 9, Cincinnati, O.:

August 2nd, 1903.

30031-3.

This call, which will be due Sept. 1, 1903, is made to meet 132 deaths (as shown by accompanying list), benefits \$313,000 and expenses on your policy, as follows:

| | |
|--|---------|
| For Mortality Call..... | \$27.90 |
| For quarterly dues to Dec. next..... | 2.25 |
| Credit | 30.15 |
| Dividend (to be applied if payment be made)..... | 2.10 |
| Amount due | \$28.05 |

Payment will not be accepted later than Sept. 5, 1903, unless residence is on or west of the meridian of Salt Lake, Utah, in which case payment will be accepted up to and including Sept. 15, 1903.

Unless the payment called for by this notice shall be paid to the company at its home office by or before the day it falls due the policy and all payments thereon will become forfeited and void.

Return this notice with remittance payable to Hartford Life Insurance Company.

Make all remittances by draft, check, P. O. or express money order when possible. Letters containing currency must be registered.

Your next quarterly call will fall due and be payable Dec. 1, 1903.

Special Notice.

If the payment of the above quarterly call is not received at this office on or before *Sept. 5, 1903, the last day allowed for payment in the above notice, a second notice will be mailed to the policy holder by registered letter, giving until *Sept. 20, 1903, to remit, and the same charge will be made for this second notice as is fixed by the law of Massachusetts, namely, fifty cents.

Every member whose payment does not reach this office on or before *Sept. 5, 1903, will be obliged to pay this fifty cent fee in order to have the policy unconditionally reinstated.

After *Sept. 20, 1903, the limit allowed for payment under the registered notice, the company reserves the right to require a medical examination as a condition of reinstatement.

*If residence is on or west of the meridian of Salt Lake, Utah, ten days' additional time is allowed.

EXHIBIT "B."

Depositions.

Present on Behalf of Plaintiff: Smith W. Bennett.

Present on Behalf of Defendant: Harry B. Arnold.

Mr. Arnold: I wish to state on behalf of the defendant that we object to the jurisdiction of the court in this case and protest against the exercise of such jurisdiction herein, and appear here solely because we are forced to appear by the action of the court in these cases.

169 GEORGE D. FRY, of lawful age, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

Direct examination.

By Mr. Bennett:

Q. 1. State your name.

A. George D. Fry.

Q. 2. Where do you reside?

A. 2320 North Fourth street, Columbus, Ohio.

Q. 3. Were you ever employed by the defendant, The Hartford Life Insurance Company? If so, when, and in what capacity?

A. As special agent, afterwards as general agent; in '83 as special.

Q. 4. How many years were you so employed?

A. About seven.

Q. 5. And what was your territory?

A. Ohio, southern Ohio.

Q. 6. Are you acquainted with the plaintiff?

A. I am.

Q. 7. Are you familiar with the terms of the policy that was held by the plaintiff in the defendant company?

A. I am.

Q. 8. Have you examined the table of rates on the back of this policy?

A. I have.

Q. 9. Now, referring to the table of graduated assessment rates for death losses for every \$1,000 of a total indemnity of \$1,000,000, I call to your attention the provision that after the policyholder arrives at the age of sixty years, the rate provided for therein shall be \$2.68. Are you familiar with that provision?

A. I am.

Q. 10. State whether there was any direction given you by the company, during the period of your service with them, with reference to that table of rates or any attempted changes therein.

170 A. To the best of my knowledge there was a change made in the rate in '81.

Q. 11. That is, the year 1881?

A. 1881.

Q. 12. State what that change was.

A. The change was from—graduated from 65 to 60. That change was made in '81.

Q. 13. And state what that provision was.

A. They were graduated to 60 years only. \$2.68 at 60 years of age. That was written part of '81, all of the year '82, and up to about June of '83.

Q. 14. How was that change evidenced, if at all? By endorsement on the policy or otherwise?

A. By endorsement on the policy.

Q. 15. You may state whether there was any agreement on the part of the plaintiff with regard to that change.

A. None whatever.

Q. 16. State if there was a slip or rider to be attached to the policy presented by you to the plaintiff.

A. There was.

Q. 17. What was the purpose of the presentation to the plaintiff by you?

A. To have them agree to the \$4.00 rate.

Q. 18. Did he so agree?

A. Quite a number agreed; others refused.

Q. 19. Did this particular plaintiff ever agree?

A. No; never did.

Q. 20. State whether you presented such slip or rider to the plaintiff, and if so for what purpose?

A. I presented the slip to the plaintiff, but they objected to signing it, that is, his consent to pay \$4.00 instead of \$2.68.

171 Q. 21. From whom had you received such slips or riders?

A. From the company.

Q. 22. How were they delivered to you?

A. I received them by mail.

Q. 23. Under whose direction were you acting in thus presenting these slips or riders?

A. The president of the company.

Q. 24. What was his name—at that time?

A. George E. Keeney.

Q. 25. I hand you here what purports to be a duplicate copy of such slips or riders, which the stenographer has marked "Exhibit A," and ask you if that is a true copy of the original presented to plaintiff?

A. It is.

Q. 26. What were your instructions from President Keeney with regard to such slips or riders?

A. To secure their signatures.

Q. 27. State whether you made any report to the company of your success or failure in obtaining their signatures to such slips or riders.

A. I mailed in the original to the company. Each signature as secured was mailed in to the company.

Q. 28. Do you know what the company thereafter did with such slips as you mailed in?

A. Put them on file in their home office.

Q. 29. Did you thereafter call at the home office of the company in Hartford, Connecticut?

A. I did.

Q. 30. Mr. Fry, there are now five cases pending in the Court of Common Pleas of Franklin county, Ohio, in which the following persons are plaintiffs: Otto E. K. Ruhrmann, Robert H. Langdale, Alonzo J. Doud, Paul Hitchcock et al., administrators of the estate of William H. Hitchcock, and I. D. Fry. State whether or not you were acquainted with each of the said plaintiffs during their lifetime; and, if any of them have deceased, state which ones.

A. Well acquainted with all. They are all alive with one exception, I. D. Fry. They are all living today, with one exception—and William Hitchcock, excuse me—the two.

Q. 31. I. D. Fry and William Hitchcock?

A. I. D. Fry and William Hitchcock.

Q. 32. State if you were the agent of the defendant company that issued the policies to any of these plaintiffs. Well, in other words, if you were the agent that sold the insurance to these plaintiffs.

A. I did not sell all of these plaintiffs.

Q. 33. State which ones you did sell.

A. I sold I. D. Fry. I am not sure as to Ruhrmann whether it was Sulzer or who placed his application; that came through the Cincinnati agency at the time. Mr. Langdale, I think, was written by Mr. Mosher; I couldn't say without seeing their contract. They had the agent's name—

Q. 34. I am only asking, Mr. Fry, as to the particular ones that you wrote.

A. Well, I. D. Fry is the only particular one, I think of the ones there.

Q. 35. I. D. Fry?

A. I. D. Fry.

Q. 36. State whether or not you called upon each of these plaintiffs with regard to executing these slips.

A. I did.

Q. 37. Now, Mr. Fry, do you know what the company did with regard to the amounts of the assessments on these plaintiffs' policies after you had failed to get their signatures on the slips?

A. They charged them all the \$4.00 rate.

Q. 38. Did you have any conversation with the president or secretary of the company relative thereto?

A. I received my instructions in regard to these slips.

Q. 39. I mean relative to the change of practice by which they were all to be assessed at a uniform rate?

A. That was brought up through the department here; called to the president's attention—to that fact that they were discriminating.

Q. 40. When you speak of the department here, what department do you refer to?

A. The insurance department of the state.

Q. 41. Who was the superintendent of insurance at the time?

A. Mr. A. I. Vorys.

Q. 42. And what did the company thereafter do with regard to charging the higher rate, or assessing the higher rate?

A. They tried to secure their signatures to grant them that permission after this question was raised.

Q. 43. You mean after the question was raised by the insurance department of the state?

A. Yes.

Q. 44. And thereafter what was done by the defendant company?

A. I called on these parties to secure their signatures to the agreement to the increase.

Q. 45. With what success?

A. Well, I had a great many to sign them and agree to it.

Q. 46. Thereafter was the assessment at the \$4.00 rate made uniform?

A. It was made uniform—they were assessing them the \$4.00 rate when this question was raised in regard to making it uniform; they were to assess them all the same whether they had a right to or not.

174 Q. 47. Well, thereafter did the company continue to assess them at the \$4.00 rate or at what rate?

A. They did.

Q. 48. Do you know Charles H. Bacall?

A. I never met Mr. Bacall.

Q. 49. Do you know what position he held?

A. He was secretary of the company.

Q. 50. Of the defendant company?

A. Yes, sir.

Q. 51. Do you know whether any parties, not meaning the plaintiff, had been rebated by the company any amounts, and if so, what?

A. There were several rebates. Mr. Schultz, the importer, was paid—he received \$270 rebate.

Q. 52. Rebate of what?

A. Of the overcharge.

Q. 53. Overcharge on what?

A. The rate, from the two sixty-eight, increased to \$4.00; two sixty-eight to \$4.00.

Q. 54. How do you know of that rebate having been paid?

A. Why, he showed me the letter of his secretary.

Q. 55. Do you know whether that was done by order of the company or any of its officers?

A. It was done by order of Stephen Ball, who was then secretary.

Q. 56. About what time was that?

A. It was about April 29, '91, that office used to assess him from that date on at the \$2.68 rate instead of \$4.00.

(By Mr. Arnold:)

Q. What was his name?

A. J. F. Schultz; he is now deceased.

175 Q. 57. Do you know of any other instances of that kind?

A. I know Mr. Gordon was rebated by Mr. Charles H.

Bacall.

Q. 58. Do you know the amount of the rebate?

A. I do not remember the amount.

(By Mr. Arnold:)

Q. What is his name?

A. W. J. M. Gordon; he is now deceased.

Q. 59. Now, Mr. Fry, were you and are you familiar with the rule by which the defendant company made computation of the amount of assessment per thousand of insurance? I am not asking you what the rule was, but whether you are familiar with such rule?

A. Yes; yes, sir.

Q. 60. Have you made a computation of the amounts of the assessments paid by Mr. Alonzo J. Doud after he arrived at the age of 60; I mean, if the difference between the \$2.68 rate and the \$4.00 rate?

A. I did.

Q. 61. In making such computation, state what rule you observed.

A. I observed the rule of the company; the ratio and the rule of deaths per table rate; the mortality to the ratio.

Q. 62. Have you the amounts of such computation with you?

A. No; I have the ratios with me, what the company issues, showing what they charged from the beginning to the present.

Q. 63. No, I mean have you now in your possession the result of your computation?

A. Yes, I have.

Q. 64. Now, you may state with regard to the Doud policy from what period you have made such computation?

A. From the attained age of 60 to the—I forgot the date—up to his last assessment.

176 Q. —. I hand you a paper, which for purposes of identification I have marked "Exhibit B," and ask you what that paper is.

A. That shows the overcharge from \$2.68 to \$4.00 rate.

Q. 66. And who made the computation therein contained?

A. I did.

Q. 67. That is, that computation down to the last assessment?

A. That was for the last assessment he paid. It was assessment call No. 152, inclusive, 152.

Q. 68. In the case of Mr. Doud, state what was done with his policy?

A. Mr. Doud still holds his policy; it is in his possession.

Q. 69. Do you know whether it is kept in force or not?

A. It is.

Q. 70. How much, if at all, should be added to that for each assessment or for each call after No. 152?

A. There should be added the additional assessments and the interest.

Q. 71. Will you have attached as part of your deposition the Exhibit A heretofore referred to as the slip or rider?

A. I will.

Q. 72. Will you have attached to your deposition as part thereof, a copy of the computation made by you under mark of Exhibit B?

A. I will.

The Exhibit A so identified is herewith presented to the notary and attached hereto, as marked by the stenographer.

Exhibit B so identified is herewith presented to the notary and attached hereto, as marked by the stenographer.

177 Cross-examination.

By Mr. H. B. Arnold:

X Q. 1. Are you related to the late George D. Fry, the plaintiff in case No. 74211?

A. That is I. D. Fry?

X Q. 2. I. D. Fry?

A. Brother.

X Q. 3. When did you first become connected with the Hartford Life?

A. In '82.

X Q. 4. You say you were special agent?

A. I was special agent at that time, and then I succeeded J. A. Sulzer, general agent, Cincinnati.

X Q. 5. You say you were special agent. Does that mean soliciting agent?

A. Soliciting agent.

X Q. 6. You say the rate was changed in 1881?

A. That was before I was with the company. They were writing this policy when I first wrote the business.

X Q. 7. You mean in '82 they were writing the present policy?

A. They were writing this two sixty-eight rate.

X Q. 8. Your information as to the change in '81 was gotten from what somebody else told you?

A. I got it off the record at Hartford, Connecticut.

X Q. 9. You say the change was evidenced by endorsement. You mean a different table of rates, or the contents of the table, on a certificate or in the body of the certificate?

A. In the body of the certificate.

X Q. 10. It was evidenced by the change in the language on the written contracts?

A. By those following this rebate and were so recognized by Stephan Ball as correct.

X Q. 11. You say you had instructions as to these riders. Were they contained in letters written to you?

178 A. They were given me by General Keeney, George E. Keeney.

X Q. 12. By letter?

A. In person. We had some correspondence afterwards. Quite a few letters passed between us.

X Q. 13. You said also you made reports. Those were written reports, I take it?

A. What was that question?

X Q. 14. Those were written reports?

A. They were all printed and signed by these insured members.

X Q. 15. Then the reports you made were by mail, by letter?

A. By letter.

X Q. 16. You spoke of a so-called rebate to J. F. Schultz. The information you say about that was the letter you said he showed to you?

A. The letter—not only the letter he showed to me, Mosher, who wrote it, Will Mosher, the general agent, spoke of this change in the contract and he wrote the company in regard to Schultz.

X Q. 17. What I mean: You personally did not make the rebate or have a personal knowledge of that rebate to Mr. Schultz?

A. I did not; that is over the secretary's signature.

X Q. 18. And the same is true as to Mr. Gordon?

A. Mr. Gordon. It is all on file at the home office.

X Q. 19. In this computation in Exhibit B, please explain how you arrived at the so-called overcharge.

A. This was the assessment the company sent out. These were the assessments that the company sent out.

X Q. 20. That is under the heading "Assessments"?

179 A. Under the head "Assessment." Call number so and so; quarterly call; they assessed this party \$27.89, calculated at \$4.00, you see. I calculated at \$2.86. The \$2.86 shows an overcharge of \$1.76. Instead of \$27.89 it should be \$26.13.

X Q. 21. Arriving at that, what method do you use?

A. I mean \$2.68 instead of \$2.86.

X Q. 22. What method do you use in arriving at that twenty-six thirteen?

A. Why, simply—that mortality ratio was simply \$3.25 per death; now they charged \$3.25 on that table rate; \$2.68; they calculated that at \$4 which their policy did not call for.

X Q. 23. I want you to just state, Mr. Fry, what figures you used in getting that result twenty-six thirteen in that column?

A. By computing the age ratio with the mortality ratio; that is the same mortality ratio that they used in obtaining this. I simply took the age ratio and the mortality ratio, the age ratio according to this contract; they changed it to \$4.00.

X Q. 24. What did you do then? You took the age ratio and the mortality ratio—

A. Why just multiplied the age ratio with the mortality ratio.

X Q. 25. Where did you get the mortality ratio?

A. From the company's call.

X Q. 26. Then by what method do you arrive at twenty-six thirteen?

A. Just according to their rule.

X Q. 27. I mean, what do you do here, multiply, or divide, or subtract—

A. I multiplied this mortality ratio with the age ratio.

X Q. 28. That is, you took the age ratio and multiplied that with the mortality ratio which the company had used?

A. Yes.

180 X Q. 29. And then multiplied that by the amount of the insurance?

A. No, I didn't—that is all the multiplying there was—the difference—I will show you here. The company sent out a call, twenty-seven eighty-nine. Now, here—I got on the wrong one. These steps are the age from two sixty-eight, you see. The charge at 60 is graduated to two sixty-eight. Now then coming 61 they charged him three nought eight instead of two eighty-six. September call was calculated at two eighty-six, steps a few cents each call.

X Q. 30. Then I understand you that, for instance, taking, on Exhibit A the assessment on call 117, you take two sixty-eight, multiply that by the mortality ratio of three—

A. Three deaths—

X Q. 31. And then multiply that age by the three thousand—

A. The amount he holds.

X Q. 32. You arrive at the result of twenty-four twelve?

A. I do.

Mr. Arnold: That is all I want to get at.

Re-examination.

By Mr. Bennett:

R. X 1. If you have with you a rule obtained from the defendant company, of which such computation is made, state what it is—what that rule is.

A. It is contained in the following slip, which is marked by the stenographer "Exhibit C."

R. X 2. Where did you get the printed slip of which you have a copy, which is hereto attached, marked "Exhibit C?"

A. They were mailed out by the secretary of the company.

181 R. X 3. And your computation attached hereto, marked "Exhibit B," state whether that is computed under that rule?

A. It is.

R. X 4. Did I understand you that the amount of the computation is based upon the difference between the rate at the attained age of 60 at \$2.68 and the amount of \$4.00 as actually assessed by the company; is that correct?

A. That is correct.

GEORGE D. FRY.

EXHIBIT "A."

Duplicate.

In consideration of the Hartford Life Insurance Company assessing my certificate No. — quarterly, and for the purpose of determining the amount of any quarterly assessment, including my said certificate with all certificates then in force in the Safety Fund Department issued prior to my said certificate and with tables of rates to age sixty-five, I hereby ratify and consent to the method heretofore employed by said company in determining the assessments on my said certificate and agree that the said company shall, in future, levy assessments against my certificate, in the same manner, and for like amount at the same attained age, as shall be levied against the aforesaid certificates issued prior to my said certificate.

Dated at — this — day of — 19—.

— —.

EXHIBIT B.

182

Langdale.

| Date. | Quarterly call. | Amt. of insurance. | Age ratio. | Mortality ratio. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|------------|---------------------|--------------|-------------|-----------|
| 1903. | | | | | | | |
| September | 100 | \$3,000 | \$2.86 | \$3.25 | \$27.89 | \$1.76 | \$1.37 |
| December | 101 | 3,000 | 2.86 | 2.80 | 24.03 | 1.51 | 1.18 |
| 1904. | | | | | | | |
| March | 102 | 3,000 | 2.86 | 3.30 | 28.31 | 1.78 | 1.28 |
| June | 103 | 3,000 | 3.08 | 3.80 | 32.58 | 4.55 | 3.28 |
| September | 104 | 3,000 | 3.08 | 3.80 | 35.11 | 4.55 | 3.28 |
| December | 105 | 3,000 | 3.08 | 3.60 | 33.27 | 4.32 | 3.11 |
| 1905. | | | | | | | |
| March | 106 | 3,000 | 3.08 | 3.60 | 33.27 | 4.32 | 2.85 |
| June | 107 | 3,000 | 3.30 | 3.80 | 37.62 | 7.07 | 4.67 |
| September | 108 | 3,000 | 3.30 | 3.60 | 35.64 | 6.71 | 4.43 |
| December | 109 | 3,000 | 3.30 | 3.80 | 37.62 | 7.07 | 4.67 |
| 1906. | | | | | | | |
| March | 110 | 3,000 | 3.30 | 3.80 | 37.62 | 7.07 | 4.24 |
| June | 111 | 3,000 | 3.65 | 3.50 | 38.32 | 10.18 | 6.11 |
| September | 112 | 3,000 | 3.65 | 3.75 | 41.06 | 10.91 | 6.55 |
| December | 113 | 3,000 | 3.65 | 3.20 | 35.04 | 9.31 | 5.59 |

1907.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 114 | 3,000 | 3.65 | 3.50 | 38.32 | 28.14 | 10.18 | 5.50 |
| June | 115 | 3,000 | 4.00 | 3.55 | 42.60 | 28.54 | 14.06 | 7.59 |
| September | 116 | 3,000 | 4.00 | 3.20 | 38.40 | 25.73 | 12.67 | 6.84 |
| December | 117 | 3,000 | 4.00 | 3.00 | 36.00 | 24.12 | 11.88 | 6.42 |

1908.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 118 | 3,000 | 4.00 | 3.20 | 38.40 | 25.73 | 12.67 | 6.08 |
| June | 119 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 7.22 |
| September | 120 | 3,000 | 4.00 | 3.60 | 43.20 | 28.94 | 14.26 | 6.84 |
| December | 121 | 3,000 | 4.00 | 3.30 | 39.60 | 26.53 | 13.07 | 6.27 |

183

1909.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 122 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 6.32 |
| June | 123 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 6.32 |
| September | 124 | 3,000 | 4.00 | 3.80 | 45.60 | 30.55 | 15.05 | 6.32 |
| December | 125 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 6.98 |

1910.

| | | | | | | | | |
|-----------------|-----|-------|------|------|-------|-------|-------|------|
| March | 126 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 5.99 |
| June | 127 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 5.99 |
| September | 128 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 5.99 |
| December | 129 | 3,000 | 4.00 | 4.20 | 50.40 | 33.77 | 16.63 | 5.99 |

EXHIBIT B.—Continued.

| Date. | Quarterly call. | Amt. of insurance. | Age ratio. | Mortality ratio. | Assessments. | Overcharge. | Interest. |
|-----------------|--------------------|-----------------------|------------|---------------------|--------------|-------------|-----------|
| 1911. | | | | | | | |
| March | 130 | 3,000 | 4.00 | 4.40 | 52.80 | 17.42 | 5.23 |
| June | 131 | 3,000 | 4.00 | 4.40 | 52.80 | 17.42 | 5.23 |
| September | 132 | 3,000 | 4.00 | 4.20 | 50.40 | 16.63 | 4.99 |
| December | 133 | 3,000 | 4.00 | 4.35 | 52.20 | 17.23 | 5.17 |
| 1912. | | | | | | | |
| March | 134 | 3,000 | 4.00 | 3.95 | 47.40 | 15.64 | 3.75 |
| June | 135 | 3,000 | 4.00 | 5.65 | 67.80 | 22.37 | 5.37 |
| September | 136 | 3,000 | 4.00 | 5.15 | 61.80 | 20.39 | 4.89 |
| December | 137 | 3,000 | 4.00 | 3.77 | 45.24 | 14.93 | 3.58 |
| 1913. | | | | | | | |
| March | 138 | 3,000 | 4.00 | 3.95 | 47.40 | 15.64 | 2.82 |
| June | 139 | 3,000 | 4.00 | 5.94 | 71.28 | 23.52 | 4.23 |
| September | 140 | 3,000 | 4.00 | 4.86 | 58.32 | 19.25 | 3.46 |
| December | 141 | 3,000 | 4.00 | 4.10 | 49.20 | 16.24 | 2.92 |
| 1914. | | | | | | | |
| March | 142 | 3,000 | 4.00 | 5.63 | 67.56 | 22.29 | 2.67 |
| Interest | | | | | | \$552.22 | \$209.58 |
| | | | | | | 209.58 | |
| | | | | | | \$761.80 | |

184

EXHIBIT "C."

The amount of each call in the Safety Fund Department is determined as follows:

By an accurate calculation, the exact amount which will be produced by the assessment of one rate, as illustrated in the table of graduated assessment rates on the back of the certificate, at the attained age of each member whose certificate is in force, is ascertained.

This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay in order to make up the full sum of death claims approved, due allowance being made for lapses. The rate increases with the advancing age each year up to the age of 65. Beyond that age the rate for the ages does not increase, and any variation in the assessment is due to a variation in mortality.

E. R. INGRAHAM,
Secretary.

(Over)

Men's Division.

| Call No. | Date. | Ratio. |
|----------|-----------------|--------|
| 101. | Nov., 1903..... | 2.8 |
| 102. | Feb., 1904..... | 3.3 |
| 103. | May, 1904..... | 3.8 |
| 104. | Aug., 1904..... | 3.8 |
| 105. | Nov., 1904..... | 3.6 |
| 106. | Feb., 1905..... | 3.6 |
| 107. | May, 1905..... | 3.8 |
| 108. | Aug., 1905..... | 3.6 |

185

| | | |
|------|-----------------|------|
| 109. | Nov., 1905..... | 3.8 |
| 110. | Feb., 1906..... | 3.8 |
| 111. | May, 1906..... | 3.5 |
| 112. | Aug., 1906..... | 3.75 |
| 113. | Nov., 1906..... | 3.20 |
| 114. | Feb., 1907..... | 3.50 |
| 115. | May, 1907..... | 3.55 |
| 116. | Aug., 1907..... | 3.20 |
| 117. | Nov., 1907..... | 3 |
| 118. | Feb., 1908..... | 3.20 |
| 119. | May, 1908..... | 3.80 |
| 120. | Aug., 1908..... | 3.60 |
| 121. | Nov., 1908..... | 3.30 |
| 122. | Feb., 1909..... | 3.80 |
| 123. | May, 1909..... | 3.80 |
| 124. | Aug., 1909..... | 3.80 |
| 125. | Nov., 1909..... | 4.20 |

| Call No. | Date. | Ratio. |
|----------|-----------------|--------|
| 126. | Feb., 1910..... | 4.2 |
| 127. | May, 1910..... | 4.2 |
| 128. | Aug., 1910..... | 4.2 |
| 129. | Nov., 1910..... | 4.2 |
| 130. | Feb., 1911..... | 4.4 |
| 131. | May, 1911..... | 4.4 |
| 132. | Aug., 1911..... | 4.2 |
| 133. | Nov., 1911..... | 4.3 |
| 134. | Feb., 1912..... | 3.9 |
| 135. | May, 1912..... | 5.6 |
| 136. | Aug., 1912..... | 5.1 |
| 137. | Nov., 1912..... | 3.7 |
| 138. | Feb., 1913..... | 3.9 |
| 139. | May, 1913..... | 5.9 |

[Certificate attached.]

186 Supreme Court of the State of Ohio, January Term, A.
1921.

(Minute Book No. 35, Page 634.)

Number: 16834.

Title of Case.

THE HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error.

v.

ROBERT H. LANGDALE, Defendant in Error.

Action: Motion for an Order Directing the Court of Appeals
Franklin County to Certify Its Record.

Error to the Court of Appeals of Franklin County.

Attorneys:

Arnold & Game, Columbus, Ohio; Jones, Hocker, Sullivan
Angert, St. Louis, Mo., for plaintiff in error.

Bennett, Westfall & Bennett, Columbus, attorney- for defendant
error.

*Transcript of Docket Entries, Memoranda of Pleadings, etc., Filed
Writs Issued, Judgments, Orders, and Decrees.*

1920.

Nov. 16. Motion for an order directing the Court of Appeals to
certify its record and proof of service filed.

" 16. Stipulation that briefs filed in No. 16833, be used in the
case, filed.

- Nov. 27. Plaintiff's printed briefs filed in No. 16833.
 " 30. Petition in error (as of right) and waiver of summons filed.
 " " Court of Appeals transcript, original papers and bill of exceptions filed.
 Dec. 1. Papers and motion taken by Toothaker & Rodenfels.
 " 1. Proof of service of plaintiff's briefs filed.
 " 14. Papers returned by Toothaker & Rodenfels.
 " 17. Defendant's printed briefs on motion to certify record and on merits of case filed.
 " 18. Printed record filed. 12/20/20, proof of service filed.
 " 30. Plaintiff's printed brief (16833-16834) filed. 1/3/21 proof of service filed.
 1921.
 Nov. 15. Judgment Affirmed. (Journal No. 29, page 46.)
 " 16. Printer's bill filed.
 " 19. Mandate issued.
 " 19. Original Papers and bill of exceptions sent to Clerk.
 " 26. Receipt for papers filed.

187 *Transcript of Journal Entries.*

No. 16834.

THE HARTFORD LIFE INSURANCE COMPANY

v.

ROBERT H. LANGDALE.

"Error to the Court of Appeals of Franklin County.

Nov. 15th, 1921.

"This cause came on to be heard upon the transcript of the record of the Court of Appeals of Franklin County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this Court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed for the reasons stated in the opinion this day filed in Cause No. 16833—The Hartford Life Insurance Company v. Alonzo J. Douds—and on the authority of that case; and it appearing to the Court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that a special mandate be sent to the Court of Appeals of Franklin County to carry this judgment into execution.

(Journal No. 29, page 46.)

188

Supreme Court of the State of Ohio.

STATE OF OHIO,

City of Columbus, ss:

I, Wilbur C. Lawrence, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said Court.

I further certify that the printed copy of the record attached hereto is a true and correct copy of the record and proceedings filed in said cause in the Supreme Court of Ohio.

In witness whereof, I have hereunto subscribed my — and affixed the Seal of the Supreme Court of Ohio, this 27th day of December, A. D. 1921.

[Seal of the Supreme Court of the State of Ohio.]

WILBUR C. LAWRENCE,

Clerk Supreme Court of Ohio.

By SEBA H. MILLER,

Deputy.

189

STATE OF OHIO,

City of Columbus:

Supreme Court of the State of Ohio, of the Term of January, A. D. 1921.

I, J. L. W. Henney, Reporter of the Supreme Court of Ohio, do hereby certify that no opinion, other than the journal entry certified by the Clerk of this Court, accompanied the decision of the Supreme Court of Ohio in Cause No. 16834, The Hartford Life Insurance Company v. Robert H. Langdale.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said Supreme Court this 21st day of December, A. D., 1921.

[Seal of the Supreme Court of the State of Ohio.]

J. L. W. HENNEY,

Reporter.

190

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Ohio, Greeting:

Being informed that there is now pending before you a suit in which The Hartford Life Insurance Company is plaintiff in error, and Robert H. Langdale is defendant in error, No. 16834, which suit was removed into the said Supreme Court by virtue of a writ of error

to the Court of Appeals of Franklin County, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Supreme Court and removed into the Supreme Court of the United States, do hereby com-
 191 mand you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the sixth day of April, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,

Clerk of the Supreme Court of the United States.

192 [Endorsed:] File No. 28711. Supreme Court of the United States, October Term, 1921. No. 756. Hartford Life Insurance Company vs. Robert H. Langdale. Writ of Certiorari. Filed in Supreme Court of Ohio Apr. 25, 1922. Wilbur C. Lawrence, Clerk, by Seba H. Miller, Deputy.

193 I, Wilbur C. Lawrence, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the above and foregoing is a full, true and complete copy of the stipulation of the parties as to return to be made to the writ of certiorari in the case of Hartford Life Insurance Company, Plaintiff in Error, vs. Robert H. Langdale, Defendant in Error, No. 16834, as fully and completely as said stipulation remains on file in my office.

In witness whereof, I have hereto set my hand and affixed the seal of the Supreme Court of the State of Ohio at my office in the City of Columbus, Ohio, this 25th day of April, 1922.

[Seal of the Supreme Court of the State of Ohio.]

WILBUR C. LAWRENCE,

Clerk of the Supreme Court of the State of Ohio,

By SEBA H. MILLER,

Deputy Clerk.

194 In the Supreme Court of the State of Ohio.

No. 16834.

HARTFORD LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

ROBERT H. LANGDALE, Defendant in Error.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the certified transcript of record prepared by the Clerk of the Supreme Court of Ohio and filed with the

petition for writ of certiorari, and now on file in the office of the Clerk of the Supreme Court of the United States, shall stand as the return of said Clerk of the Supreme Court of Ohio to the writ of certiorari, without the preparation of another transcript, and to this end it shall only be necessary for said Clerk to transmit to the Clerk of the United States Supreme Court a certified copy of this stipulation as his return to the writ of certiorari.

HARRY B. ARNOLD,
JAMES C. JONES,
FRANK H. SULLIVAN,
JAMES C. JONES, JR.,
Attorneys for Plaintiff in Error.
SMITH W. BENNETT,
Attorney for Defendant in Error.

195

Return to Writ of Certiorari.

UNITED STATES OF AMERICA,
State of Ohio, ss:

In obedience to the command of the within writ of certiorari, and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record filed with the petition for a writ of certiorari in the case of Hartford Life Insurance Company, Plaintiff in Error, vs. Robert H. Langdale, Defendant in Error, No. 16834, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate hereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of the State of Ohio at office in the City of Columbus, Ohio, this 25th day of April, 1922.

[Seal of the Supreme Court of the State of Ohio.]

WILBUR C. LAWRENCE,
Clerk of the Supreme Court of the State of Ohio,
By SEBA H. MILLER,
Deputy Clerk.

196 [Endorsed:] File No. 28,711. Supreme Court U. S. October Term, 1921. Term No. 756. Hartford Life Insurance Co., Petitioner, vs. Robert H. Langdale. Writ of certiorari and return. Filed April 29, 1922.

FEB 12 1925

WM. H. STANBURY
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1924~~ 1925

**HARTFORD LIFE INSURANCE
COMPANY,**

Petitioner,

vs.

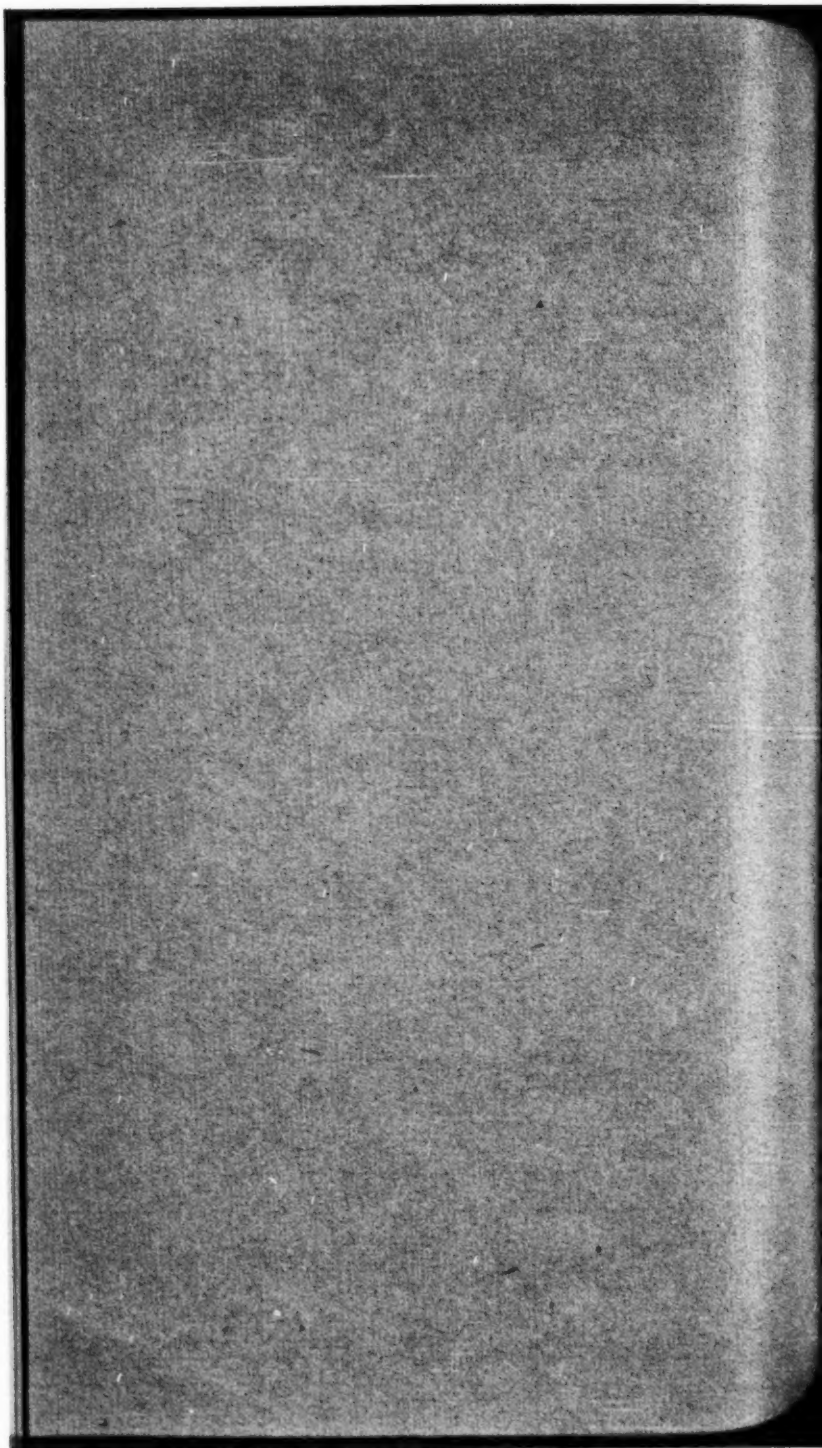
**FRANK F. DOUDS, HERMAN J.
DOUDS and REBECCA E. McCON-
KEY, Executors of the Last Will and
Testament of ALONZO J. DOUDS,
Deceased,**

Respondents.

No. 265.

**BRIEF OF PETITIONER, HARTFORD LIFE
INSURANCE CO.**

**HARRY B. ARNOLD,
JAMES C. JONES,
FRANK H. SULLIVAN,
JAMES C. JONES, JR.,**
Counsel for Petitioner.



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INDEX.

| | Page |
|---|-------|
| Statement of case..... | 1-6 |
| Specification of errors..... | 7-8 |
| Points and authorities..... | 9 |
| 1. Judgment in a suit in which Court has no jurisdiction of subject matter is a denial of due process of law..... | 9 |
| 2. (a) Subject matter of this suit involved internal affairs of petitioner over which Ohio Court had no jurisdiction..... | 9-10 |
| (b) The right to do business in a foreign state does not authorize the Courts of that state to control or regulate the internal affairs of the foreign company..... | 11 |
| 3. Court has no power to control foreign trustee in the operation of a trust in foreign state | 11 |
| 4. Courts of Connecticut have already adjudicated respecting subject matter of this suit | 12 |
| 5. Evidence was insufficient to justify the finding of Ohio Court that the assessments complained of were excessive or excessive to the extent for which judgment was rendered | 12 |
| Argument | 13 |
| 1. A judgment against defendant in a suit in which Court is without jurisdiction of subject matter deprives defendant of its property without due process of law, in violation of the Fourteenth Amendment..... | 13-14 |

2. The subject matter of this suit involved internal affairs of petitioner over which Ohio Courts had no jurisdiction.....14-39
3. Ohio Court had no power or jurisdiction to control administration of trust, or trust estate, in Connecticut.....39-42
4. Connecticut has ruled contrary to Ohio in the matter here in controversy.....42-46
5. Evidence was insufficient to justify either the finding of the Ohio Court that the assessments complained of were excessive or the judgment for the amount of the alleged excess of such assessments.....46-54

List of Cases Cited in Brief.

- Boyette v. Preston Motors Corporation, 89 So. 746 (Ala.).....11, 28
- Clark v. Mutual Reserve Fund Life Ass'n, 14 App. (D. C.) 154.....10, 23
- Condon v. Mutual Reserve Fund Life Assn., 89 Md. 99, 42 Atl. 944.....10, 15, 32
- Eberhard v. Northwestern Mutual Life Ins. Co., 210 Fed. 520.....10, 24
- Frick v. Hartford Life Insurance Co., 159 N. W. 247 (Ia.)..... 31
- Guilford v. Western Union Tel. Co., 59 Minn. 332, 61 N. W. 324.....11, 35
- Hartford Life Ins. Co. v. Ibs, 237 U. S. 665—
10, 11, 12, 21, 40, 42
- Hogue v. American Steel Foundries, 247 Pa. 12, 92 Atl. 1073.....11, 29
- Howard v. Mutual Reserve Fund Life Ass'n, 125 N. C. 49, 34 S. E. 199.....10, 11, 23, 34, 35

INDEX—Continued.

iii

| | |
|--|------------|
| Lines v. Lines, 142 Pa. St. 149, 21 Atl. 809.... | 11, 41 |
| Maguire v. Mortgage Trust Co., 203 Fed. 858... | 23 |
| New York Life Ins. Co. v. Dunlevy..... | 9 |
| New York Life Ins. Co. v. Head, 234 U. S. 149, 162 | 11, 36 |
| Old Wayne Mutual Life Ass'n v. McDonough... | 9 |
| Olsen v. Danish Brotherhood in America..... | 11, 25 |
| Pennoyer v. Neff, 95 U. S. 714..... | 9, 13 |
| Richards v. Security Mutual Life Ins. Co., 119 N. E. 744 (Mass.)..... | 10, 24 |
| Riverside Mills Co. v. Menefee, 237 U. S. 189.... | 9 |
| Royal Fraternal Union v. Lundy, 51 Tex. Civ. App. 637, 113 S. W. 185..... | 10, 24, 38 |
| Sauerbrunn v. Hartford Life Ins. Co., 220 N. Y. 363, 115 N. E. 1001..... | 10, 24, 33 |
| Scott v. McNeal, 154 U. S. 34, 46..... | 9, 13 |
| Selig v. Hamilton, 234 U. S. 652..... | 22 |
| State ex rel. Hartford Life Insurance Co. v. Shain, 245 Mo. 78, 149 S. W. 868..... | 10, 24 |
| State ex rel. Minnesota Mutual Life Ins. Co. v. Denton, 229 Mo. 187, 129 S. W. 709..... | 10, 11, 27 |
| Tolbert v. Modern Woodmen of America, 145 Pac. 183 (Wash.) | 11, 36 |
| Taylor v. Mutual Reserve Fund Life Ass'n, 97 Va. 60, 33 S. E. 385..... | 10, 11, 23 |
| 22 Encyc. of Pl. & Pr., p. 21..... | 11, 40 |

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

HARTFORD LIFE INSURANCE
COMPANY,

Petitioner,

vs.

FRANK F. DOUDS, HERMAN J.
DOUDS and REBECCA E. McCON-
KEY, Executors of the Last Will and
Testament of ALONZO J. DOUDS,
Deceased,

No. 265.

Respondents.

BRIEF OF PETITIONER, HARTFORD LIFE
INSURANCE CO.

STATEMENT.

MAY IT PLEASE THE COURT:

Petitioner is a corporation, organized under the laws of Connecticut, having its home office in the City of Hartford in that state, where in its Safety Fund De-

partment, and as trustee for the holders of certificates in that department, it is now and has been, for many years past, operating and conducting a life insurance business on the assessment or mutual plan.

On November 10, -1916, Alonzo J. Douds, a citizen and resident of Ohio, and the holder of three certificates of membership for \$1,000 each, issued in 1883 in the Safety Fund Department of petitioner, filed suit against petitioner in the Court of Common Pleas, Franklin County, State of Ohio, in which it was averred (Rec., p. 6) that from and since the year 1898 petitioner had been levying assessments against him under these certificates which were excessive in amount and in excess of the rate of assessment specified in the table of rates incorporated in his certificates; that the amount of the excess of such assessments was to him unknown, but that the same amounted to about the sum of \$900. Upon these averments Douds prayed (1) for an accounting to determine the amount of the excess of the assessments paid by him under his certificates; (2) for a money judgment for the amount of the excess of the assessments, with interest, found to have been paid by him upon such accounting, and (3) for an injunction to restrain petitioner from thereafter levying assessments against him under said

certificates in excess of what the Ohio Court should determine to be the lawful and proper rate of assessment.

To this bill of complaint petitioner demurred on the ground that it appeared from the averments of the bill that the Ohio Court had no jurisdiction of the subject matter of the suit. This demurrer was overruled (Rec., p. 3) and petitioner, being ordered so to do (Rec., p. 4), filed its answer, in which it reasserted the lack of jurisdiction of the Ohio Court over the subject matter of this suit and that the Court was without power to grant the relief prayed for therein; that the suit appertained to the internal affairs of petitioner, over which the Ohio Court had no jurisdiction or power to regulate or control and that the exercise of jurisdiction in this suit by the Ohio Court, and the granting of the relief prayed for therein, would deprive petitioner of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Federal Constitution (Rec., p. 19).

Upon the filing of this answer the trial court referred the cause to a referee to take an accounting and to report to the Court his findings and conclusions of law upon such accounting (Rec., p. 4).

Thereafter the Referee filed his report (Rec., p. 27) in which he found that the assessments levied against bonds under these certificates since 1898 were excess-

sive, and in excess of the rate of assessment specified therein; determined what the proper or lawful rate of assessment should have been thereunder; found that the excess of such assessments amounted to \$1,857.15, and recommended the granting of the relief prayed for in the bill.

Douds died shortly after the filing of this report, and the cause was revived in the name of the respondents as his personal representatives (Rec., p. 4).

Thereafter, and in conformity with the findings of the Referee, judgment was entered by the Court of Common Pleas against petitioner and in favor of respondents for the sum of \$1,857.15 as the amount of the excess of the assessments paid by Douds under these certificates since 1898. The Court did not decree the injunctive relief prayed for in the bill.

From this judgment petitioners appealed to the Court of Appeals for Franklin County, Ohio (Rec., p. 55). The judgment was thereafter affirmed by that Court (Rec., pp. 55-56), whereupon, on motion of petitioner, the appeal was certified to the Ohio Supreme Court (Rec., p. 133). On November 15th, 1921, the judgment of the Ohio Court of Appeals was affirmed by the Ohio Supreme Court (Res., p. 133), following which the petitioner applied to this Court for a writ of certiorari to review the judgment of the Ohio Supreme Court.

The question here presented for determination is: Did the Ohio Court have jurisdiction of the subject matter of this suit? It is the insistence that it did not; that the suit involved (1) the *internal affairs* and management of petitioner, a *foreign* corporation, and (2) the *validity* of acts performed by petitioner in the management and operation of the safety fund department, as *trustee*, for the members or certificate holders in that department, over which the courts of Connecticut had sole and exclusive jurisdiction; that the exercise of jurisdiction by the Ohio courts in this suit was an invasion of the exclusive sovereign powers of the State of Connecticut and the judgment rendered by the Ohio court deprived petitioner of its property without due process of law contrary to and in violation of the Fourteenth Amendment to the Federal Constitution, because that court was without jurisdiction of the subject matter of the suit. The privilege and immunity so claimed by petitioner under the Federal Constitution was asserted by it from the beginning of this litigation and reasserted at every stage of the proceeding. That the privilege so asserted by petitioner under the Federal Constitution was denied by the Ohio Supreme Court appears from the following portion of the syllabus of that Court to its opinion rendered herein (Rec., p. 134):

“1. Upon the filing of a petition in an Ohio court of competent jurisdiction by one of its citizens against a foreign insurance company, based upon a contract for insurance issued by such foreign insurance company to such citizen, such court, upon proper service of summons, has jurisdiction of the subject matter to render a money judgment for the amount found due upon such contract, and upon proper proof to make an accounting and render judgment for all sums of money wrongfully obtained under color of such contract; and the exercise of such jurisdiction and the rendering of such judgment do not interfere with the discretion, the internal management or the control of such company, *and are not in violation of the Fourteenth Amendment of the Constitution of the United States.*”

SPECIFICATION OF ERRORS.

Petitioner relies upon the following errors in support of its prayer for the reversal of the judgment of the Supreme Court of Ohio herein:

1. The claim of Douds, as a member of the Safety Fund Department of petitioner, that the assessments previously levied against him under his certificate were illegal and excessive, and his bill herein for an accounting to determine the amount of the excess of these alleged excessive assessments and for a money judgment for the excess of the assessments found to have been paid by him upon such accounting had to do with the *internal affairs* and *management* of petitioner, a Connecticut corporation, over which the courts of Ohio had no jurisdiction, and the exercise of such jurisdiction and the rendition of the judgment complained of herein by the Ohio court deprives petitioner of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Federal Constitution.

2. The Ohio Supreme Court erred in holding that the exercise of jurisdiction in this cause and the rendition of the judgment herein by the Ohio Court did not deprive petitioner of its property without due

process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

3. The subject matter of this suit likewise involved the validity of acts performed by petitioner *as trustee* in the management and operation of its Safety Fund Department in the State of Connecticut, over which the courts of Connecticut had sole and exclusive jurisdiction, and the exercise of jurisdiction and the rendition of the judgment complained of herein by the Ohio Court deprived petitioner of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Federal Constitution; and the Ohio Supreme Court erred in holding that the exercise of jurisdiction by the courts of that state and the rendition of the judgment complained of herein did not deprive petitioner of its property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

POINTS AND AUTHORITIES.

I.

Jurisdiction of the *subject matter* of an action is an essential prerequisite to due process of law. The exercise of jurisdiction by a court of one state where the courts of another state have exclusive jurisdiction of the subject matter of the action is a *denial* of *due process of law* and a judgment in such an action deprives the defendant of its property without due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

Scott v. McNeal, 154 U. S. 34, 46;

Pennoyer v. Neff, 95 U. S. 714, 720;

Riverside Mills v. Menefee, 237 U. S. 189;

New York Life Ins. Co. v. Dunlevy, 241 U. S. 518;

Old Wayne Mutual Life Assn. v. McDonough, 204 U. S. 8.

II.

(a) A suit by a member of a mutual or assessment insurance company to determine the validity of assessments previously levied against him under his certificate, and for an accounting to determine the amount of the excess of the assessments paid and

for a money judgment for the amount of the excess of the assessments found to have been paid by the member upon such an accounting, constitutes and involves an interference with the internal affairs and management of such a company, over which the courts of the state, other than that where the company is incorporated and where it conducts and operates its business, have no jurisdiction.

- Condon v. Mutual Reserve Fund Life Assoc.*,
89 Md. 99, 42 Atl. 944;
Hartford Life Ins. Co. v. Ibs, 237 U. S. 665,
671;
Sauerbrunn v. Hartford Life Ins. Co., 220 N. Y.
363, 115 W. E. 1001;
State ex rel. Hartford Life Ins. Co. v. Shain,
245 Mo. 78, 149 S. W. 868;
State ex rel. Minnesota Mutual Life Ins. Co.
v. Denton, 229 Mo. 187, 129 S. W. 709;
Eberhard v. Northwestern Mutual Life Ins. Co.,
210 Fed. 520;
Taylor v. Mutual Reserve Fund Life Assoc.,
97 Va. 60, 33 S. E. 385;
Howard v. Mutual Reserve Fund Life Assoc.,
125 N. C. 49, 34 S. E. 199;
Clark v. Mutual Reserve Fund Life Assoc.,
14 App. D. C. 154;
Richards v. Security Mutual Life Ins. Co., 119
N. E. 744 (Mass.);
Royal Fraternal Union v. Lundy, 51 Tex. Civ.
App. 637, 113 S. W. 185;
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- Olsen v. Danish Brotherhood in America, 184 N. W. 178 (Minn.);
Boyette v. Preston Motors Corp., 89 So. 746 (Ala.);
Hogue v. American Steel Foundries, 247 Pa. 12, 92 Atl. 1073.

(b) Nor does the fact that the foreign corporation is licensed to do business in the state in which the suit is instituted confer upon the courts of the latter state the power or jurisdiction to regulate the internal affairs of such company.

- Guilford v. Western Union Telegraph Co., 59 Minn. 332, 61 Mo. 324;
Tolbert v. Modern Woodmen of America, 145 Pac. 183 (Wash.);
Howard v. Mutual Reserve Fund Life Assoc., 125 N. C. 49, 34 S. E. 199;
Taylor v. Mutual Reserve Fund Life Assoc., 97 Va. 60, 33 S. E. 385;
New York Life Ins. Co. v. Head, 234 U. S. 149;
State ex rel. Minnesota Mutual Life Ins. Co. v. Denton, 229 Mo. 187.

III.

A court has no power or jurisdiction to control or regulate a *foreign* trustee in the management and operation of a trust in a *foreign* state.

- Hartford Life Ins. Co. v. Ibs, 237 U. S. 662;
Lines v. Lines, 142 Pa. St. 149, 21 Atl. 809;
22 Encyc. of Pl. & Pr., p. 21.

IV.

The courts of Connecticut have already adjudicated respecting the subject matter of this suit.

Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, 668.

V.

An examination of petitioner's books and records was necessary in order to determine the validity of the assessments complained of and the excess, if any, of such assessments paid by Douds. The evidence in this case was insufficient to justify either the finding of the Ohio Court that these assessments were excessive or the judgment entered upon such finding for the amount of the claimed excess of such assessments.

ARGUMENT.

I.

A Judgment Against a Defendant in an Action in Which the Court Is Without Jurisdiction Deprives Defendant of Its Property Without Due Process of Law.

If, as we claim, the Ohio Court had no jurisdiction of the subject matter of this suit, then the exercise of jurisdiction and the rendition by that Court of the judgment herein was a denial of due process of law and deprived the petitioner of its property without due process of law in contravention of the Fourteenth Amendment to the Federal Constitution.

In *Scott v. McNeal*, 154 U. S. 34, 46, it was said:

“No judgment of a court is *due process of law* if rendered without *jurisdiction*. * * *”

In *Pennoyer v. Neff*, 95 U. S. 714, 720, the Court in holding that the authority of a judicial tribunal of a state is restricted to the territorial limits of the state of its creation, said:

“The authority of every tribunal is necessarily *restricted by the territorial limits* of the state in which it is *established*. Any attempt to *exercise*

authority beyond these limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power and resisted as mere abuse. * * * Since the adoption of the Fourteenth Amendment to the Federal Constitution the validity of *such* judgments may be *directly questioned*, and their enforcement in the state resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of the parties do not constitute due process of law."

II.

The Subject Matter of This Suit Involved an Interference With the Internal Affairs of Petitioner.

A suit which, as here, has to do with the proper rate of assessment levied by a mutual or assessment company against its members, and for an accounting to determine the amount of the excess of the alleged excessive assessments claimed to have been levied against the member under his certificate, is inherently dealing with the internal affairs of the company. Such assessments are only levied upon members, and only members are interested in the rate of frequency, or method of assessment. The process represents the collection of money for the purpose of paying the same to the beneficiaries of deceased members. Indeed, the company performs no other function. And not only that, but if we judge the situation by the

terms of the contract, petitioner has doubtless long since paid to the beneficiaries of deceased members the money which the Ohio Court now holds was excessively collected from Douds, and the judgment in this case, if valid, must be paid out of the proceeds of assessments collected from other members under their certificates. Manifestly, therefore, the question of the validity of these assessments, and the right of Douds to the return of the excess of these alleged excessive assessments, directly and vitally concerns each and every one of the members of the Safety Fund Department of petitioner. Indeed, the acts here complained of not only affect the relation of the members of the Safety Fund Department to one another, but if Douds is entitled, as the Ohio Court holds, to the return of the excess of these alleged excessive assessments, then his fellow members will have to repay the same to him, notwithstanding that they, too, have also paid the assessments which the Ohio Courts hold to be illegal and excessive. One of the earliest, and probably the leading, case on the question here involved is *Condon v. Mutual Reserve*, 89 Md. 99, 42 Atl. 944. That was a suit instituted in Maryland by a member of the Mutual Reserve Fund Life Association, an assessment company incorporated under the laws of the State of New York, in which it was alleged, as here, that the assessments previously levied against the plaintiff under his certificate were in excess of the

rate of assessment therein provided for. And in that case, as here, the relief prayed by plaintiff was:

1. For an accounting to determine the amount of the excess of the assessments previously paid.

2. A money judgment for the amount of the excess of such assessments as determined by such accounting.

3. An injunction to restrain the company from thereafter assessing plaintiff in excess of the rate specified in the certificate.

The Maryland Court held that the suit involved an interference with the internal affairs of the defendant, over which the courts of the state had no jurisdiction, and said:

“With this limit to the court’s jurisdiction established, it becomes necessary to ascertain what is and what is not a controversy relating solely to the *internal* management of a corporation; in other words, what acts are so distinctively acts pertaining to the internal management of a foreign corporation as to preclude an inquiry into them by any tribunal other than the courts of the corporation’s domicile. * * *

In *Field’s case*, *supra* (64 Md. 151), which has been followed by many other courts of the country, it was said: ‘Where the act complained of *affects* the complainant solely in his *capacity* as a member of the *corporation*, whether it be a stock-

holder, director, president, or other officer, and *is the act of the corporation*, whether acting in stockholders' meeting or through its agents, the board of directors, *then such action is the management of the internal affairs of the corporation*, and in case of a foreign corporation, our courts will not take jurisdiction.' * * *

"We turn now to the allegations of the bill to ascertain whether the acts complained of are, according to the definition in Field's case, acts of internal management or not. Laying aside for the moment the question as to whether the certificate of membership, by its terms, authorizes an increase in the amount of the assessments above \$3.25 per \$1,000 of insurance, and permits the levying of more than the designated bi-monthly ones, it is obvious, we think, that the *whole fabric of the bill with respect to these alleged illegal assessments involves*, as its foundation, *the right of a Maryland court to inquire into the internal management of this New York corporation*. The substance of the allegations of the bill, as we have heretofore stated them on this subject, is that *these excessive assessments are not only void, because not authorized, but because the condition of the death fund not demanding that they should be laid, they were made with the dishonest and fraudulent purpose of forcing the appellant's policy, and the policies of others similarly situated, to lapse*. Now, it is perfectly apparent that no tribunal can possibly decide whether the condition of the death fund required these extra assessments to be levied, until it

knows what the condition of the death fund was and what demands there were upon it. And it is equally clear that, in order that these factors may be known, the whole internal management of the association must be investigated. *The disposition made of the money assessed for, and payable to, the death fund, the validity of claims against that fund, the propriety of expenditures charged against it, and other like inquiries, strictly relating to the internal management and to the proper disbursement of the money which the many thousand members have intrusted to the director's control, would all have to be solved, before a court could say that these assessments were unnecessary or fraudulent. No court could declare them excessive until it knew what sum was not excessive, and no court could decide what sum was not excessive until it was placed in the full possession of all the facts pertaining to the whole internal conduct of the company. These observations apply, also, to the charges of the bill in respect to the amount of the reserve fund bonds issued to Condon. It is alleged that a true accounting will show him entitled to bonds for larger amounts. A true accounting can only be had by an examination of all the entries relating to this fund, and by correcting errors, if any there are. Obviously, this would involve a control of the company's internal affairs by the agency of an injunction issued by a Maryland court, though that court possesses no power to enforce the injunction if its commands were treated with contumely by the corporation. These*

matters thus complained of do not affect the appellant's individual rights solely. They relate also to the rights, and bear upon the liabilities, of every other member as an insurer; and while in a sense they may, by their consequences, affect him individually, as assured, they do not affect him exclusively, but concern, as well, the internal management of the company. His relation to the corporation is, as we have stated, of a two-fold character. He is insurer and insured. It is possible that the same act of the body-corporate may affect both of these relations. In that event, it could not be said that the act affected a member's individual rights only."

* * * * *

*"Every right asserted by Condon is a right founded on his membership * * * in respect of some matter pertaining to the management and internal government of the association. While the acts complained of may affect him, they do not affect him alone, and they only affect him in any way because of his membership. If these acts are unwarranted, they are certainly not more grave than the forfeiture of Field's stock for the nonpayment of an illegal and void assessment. And if the latter gave no ground for the interposition of a court of equity, because it was an act of internal management done by a foreign corporation, it is difficult to see how the former can be classed as acts affecting only the individual rights of Condon. In Field's case an injury was done to him by the misconduct complained of, but the injury was not an injury solely to his*

individual rights. The act which occasioned the wrong was a corporate act, relating to the internal government of the company. Its effect upon him did not deprive it of its character as a corporate act. The results to Condon do not define the nature of the acts which he complains of, or prevent them, because they do him injury as he alleges, from being acts pertaining to the internal government of a foreign corporation of which he is a member. Were he suing on the contract of insurance, the situation would be different."

And, in holding that the courts of the state where a company is incorporated have sole and exclusive jurisdiction of suits involving the internal affairs of such company, the Court said:

"A policyholder in a mutual insurance association stands in a *twofold* relation towards the company. He is a *policyholder* and he is a *member*. * * * He is alike insurer and insured, but in both capacities he is a member, and it is solely because he is a member that he occupies either of these positions. His liabilities as insurer and his rights as insured depend wholly upon the obligations and conditions of his membership. Those obligations and conditions are evidenced by the constitution and the by-laws of the association, and by his application for, and his certificate of, membership, and by the law of the place of the contract. Apart from these, there is nothing by which his duties and his rights as

a member are to be determined. *Rights* as an *insured* he undoubtedly has. Those *rights* may be unlawfully invaded. If thus *invaded*, he is not without redress when he *seeks* relief *in the forum* having *jurisdiction* over the *parties* and the *subject matter*. The mere fact that he is a *member* of the corporation does *not preclude* him from asserting against the corporation any right arising out of his *contract*, but the character of the *remedy invoked* may measure the *limits* of the *jurisdiction* of the tribunal appealed to, when the *domicile of the corporation is considered*. It is therefore entirely possible that a state of facts which would authorize a court in the exercise of its visitatorial power, to inquire into the validity of acts *affecting the rights of a policyholder*, when done by a corporation *located within the jurisdiction of the court*, would, as respects a *foreign corporation*, be wholly insufficient to confer upon the *same court jurisdiction* to act at all.

* * * This *litigation was not* instituted to *recover* on the policy a sum payable under it for a loss actually sustained. *Its object*, as will be shown later on, is to *regulate by a decree* of the Circuit Court of Baltimore City, the management, the conduct, and the *internal government of a foreign corporation* * * *."

The ruling of the Maryland Court in the Condon case, *supra*, was cited with approval by this Court in *Hartford Life Insurance Company v. Ibs*, 237 U. S. 665. The *Ibs* case reached this Court on a writ of error to the Supreme Court of Minnesota and was

an action on the certificate of a deceased member for a recovery of the benefits promised by the certificate or contract upon the death of the member. In the course of its opinion in the Ibs case this Court, in holding that the courts of Connecticut had jurisdiction of all matters appertaining to the internal affairs of your petitioner, said (*l. c.* 671):

“For—whether the members of the ‘Safety Fund Department’ are regarded as occupying a position analogous to that of shareholders; or are treated as beneficiaries of trust property in the hands of the company, as trustee, in the State of Connecticut—the courts of that state had *jurisdiction* of all questions relating to the *internal management* of the corporation (*Selig v. Hamilton*, 234 U. S. 652; *Insurance Co. v. Harris*, 97 U. S. 336; *Condon v. Mutual Reserve*, 89 Maryland 99; *Maguire v. Mortgage Co.*, 203 Fed. Rep. 858).”

The language used, as well as the authorities cited, indicates that when this Court said that the courts of Connecticut had jurisdiction of all questions relating to the internal management, it meant *exclusive* jurisdiction. For instance, one of the cases cited is *Selig v. Hamilton*, 234 U. S. 652, where it was held that the jurisdiction of the Minnesota courts to determine the necessity and amount of an assessment to be levied against a stockholder of an insolvent Minne-

sota corporation was *exclusive* of any inquiry by the courts of New York into that question, even though such stockholder resided in that state.

Another of the cases cited is that of *Magnire v. Mortgage Co.*, 203 Fed. 858, where the Circuit Court of Appeals for the Second Circuit held that the jurisdiction of the domiciliary court to wind up the affairs of an insolvent corporation was *exclusive* of a *similar jurisdiction in any other court*.

And in the following cases, which were similar to the Condon case, *supra*, and to the case at bar, it was held that a suit by a member against a foreign assessment company to recover back the excess of prior assessments, which were claimed to be illegal and excessive, and for an accounting to determine the amount of the excess of such assessments and for an injunction to enjoin the company from levying assessments in excess of that fixed by the Court, involved an interference with the internal affairs of the foreign company over which the courts had no jurisdiction.

Howard v. Mutual Reserve Fund Life Assoc.,
125 N. C. 49, 34 S. E. 199;

Clark v. Mutual Reserve Fund Life Assoc., 14
App. D. C. 154;

Taylor v. Mutual Reserve Fund Life Assoc.,
97 Va. 60, 33 S. E. 385;

Eberhard v. Northwestern Mutual Life Ins.
Co., 210 Fed. 520;
Richards v. Security Mutual Life Ins. Co., 119
W. E. 744 (Mass.);
Royal Fraternal Union v. Lundy, 51 Tex. Civ.
App. 637, 113 S. W. 185.

In *Sauerbrunn v. Hartford Life Ins. Co.*, 220 N. Y. 363, 115 W. E. 1001, and *State ex rel. Hartford Life Ins. Co. v. Shain*, 245 Mo. 78, 149 S. W. 868, which were analogous to the case at bar, the courts of last resort in New York and Missouri held that the subject matter of the suit involved the internal affairs of petitioner over which the courts of those states had no jurisdiction.

In the *Sauerbrunn* case, *supra*, the Court said:

• “The trend of decisions of the courts is contrary to assumption of jurisdiction by the courts of the action at bar. We may assume that the membership of the defendant corporation extends throughout a number of states, and while it may be said that the present action affects the plaintiff alone, we cannot overlook the fact that if the various states assume jurisdiction in like actions the decisions of the courts might be divergent, different rules of law would prevail and a corporation might be called upon to account in various states and relieved therefrom by the decrees of the courts in other states. Likewise, it might be held legal for it to increase assessments

in certain jurisdictions and illegal to increase and collect the same in other jurisdictions. * * * Numerous jurisdictions have determined that an action like unto the one at bar is one relating to the internal affairs of a corporation of which the courts will *decline* to assume *jurisdiction* (Clark v. Mutual Reserve, 14 App. D. C. 154; State *ex rel.* Minnesota Mutual Life Ins. Co. v. Denton, 229 Mo. 187; State *ex rel.* Hartford Life Ins. Co. v. Shain, 245 Mo. 87; Taylor v. Mutual Reserve, 97 Va. 60; Royal Fraternal Ass'n v. Lundy, 51 Tex. Civ. Ap. 640; Condon v. Mutual Reserve, 89 Md. 99, approved in Hartford Life Ins. Co. v. Ibs, 237 U. S. 662, citing additional cases; Eberhard v. Northwestern Mutual, 210 Fed. 520). The *reasoning* of the courts in the cases cited is forceful and meets with our *approval*."

And in the Shain case, *supra*, the Missouri Court, after an exhaustive review of the authorities, in concluding, said:

"Entertaining these views of the law, in our opinion, the Circuit Court of Pettis County has no jurisdiction to take the accounting prayed for, nor to grant the relief asked."

In Olsen v. Danish Brotherhood in America, 184 N. W. 178, the Supreme Court of Minnesota held that the courts of Minnesota had no jurisdiction in a suit brought in that state by a member of an

assessment company organized under the law of another state to determine the validity of assessments levied by the defendant company as such matters appertained to the company's internal affairs, and said:

“But it is quite apparent that *fixing rates* and benefits of a corporation of this kind pertains to the management of its internal affairs. Benefits promised must come from *rates paid* or *assessments levied* against the members. The *very existence* of the corporation depends upon a proper adjustment of *rates* and *benefits*. How this is to be done is peculiarly a problem of *internal* management, to be solved by the governing body of the corporation or by delegates of its members in convention assembled. * * * It is apparent that, if all action of the nature here pleaded may be maintained in every state where the corporation has members, uniformity of either assessments or benefits could not be hoped for. The courts of one state might hold changes made by the corporation valid, while courts of other states declare them void. No association of the sort here involved, having members in different states, could well survive a condition where the courts of a state other than its domicile step in and determine for the future what the assessments and benefits of its members in such state shall be. The disaster likely to result to foreign fraternal beneficiary associations of actions of the instant type lie, may well cause courts to pause before assuming jurisdiction.

Especially so in view of the decision in *Royal Arcanum v. Green*, 237 U. S. 531, where it was held that an adjudication as to rates and benefits by the courts of the domicile of the corporation finds its members wherever residing. Some courts also give it as a reason for declining to assume jurisdiction over affairs relating to the internal management of a foreign corporation that neither its officers or governing body, nor its records are within the reach of the decrees of, orders, or processes of any courts except the courts of its domicile.

“This Court has repeatedly recognized the rule that equity will not take jurisdiction of action wherein it is sought to interfere with the internal management of a foreign corporation (*Guilford v. Western Union Telegraph Co.*, 59 Minn. 332, 61 N. W. 324; *Selover v. Isle Harbor Land Co.*, 91 Minn. 451, 98 N. W. 344; *State ex rel. v. De Groat*, 109 Minn. 168, 123 N. W. 417; *Gere v. Dorr*, 114 Minn. 240, 130 N. W. 1022; *Van Dyke v. Railway Mail Assoc.*, 118 Minn. 390, 137 N. W. 15; *Tasler v. Peerless Tire Co.*, 144 Minn. 150, 174 N. W. 731. — * —

“In our opinion the amended complaint shows on its face that the action is one in which a court of this state is asked to interfere with the internal management of a foreign corporation. Jurisdictions should not be assumed for that purpose, and the demurrer should be sustained.”

In *State ex rel. Minnesota Mutual Life Ins. Co. v. Denton*, 229 Mo. 187, the plaintiff, a member of an

assessment insurance company, incorporated under the laws of Minnesota, instituted suit in Missouri, asserting that the defendant had illegally increased the assessments under his certificate and praying, among other things, for an accounting to determine the amount of the excess of these alleged excessive assessments and a money judgment for the excess of the assessments found to have been paid by him upon such accounting. The Court held that these matters involved the internal affairs of the defendant over which the courts of Missouri had no jurisdiction, and said, *l. c.* 199:

“There are, according to the petition, a large number of holders of policies like those held by plaintiff, scattered perhaps over many states, each of whom has as much right to bring a like suit in his state as the plaintiff has to bring this suit. Each of those many policyholders would have an interest in each of the many suits, because in a mutual concern the interest of one cannot be determined without determining the interest of all, or at least the basis on which the interest of all must be calculated. It would be a strange system of law that would involve a concern in such confusion. If such were the law no insurance company would venture to do business outside its own state.”

In *Boyette v. Preston Motors Corp.*, 89 So. 746, the Supreme Court of Alabama, in holding that a suit in

Alabama to compel the issuance by the defendant, a Delaware corporation, of a certain amount of its capital stock involved an interference with the internal affairs of defendant, over which the courts of Alabama had no jurisdiction, said:

“The bill of complaint shows clearly that the only injury, if any, the complainant Boyette may have sustained by reason of the alleged wrong of the officers and directors of the Motor Car Company was a *common* injury, which *he* and *all* the *other stockholders* of the old company *sustained*, and his claim is differential in *no* respect from the *rights* of the *other stockholders*, except as to the number of shares owned by each stockholder. Therefore, it necessarily follows that a decision in this case as to the *liability vel non* of the Motors Corporation, or its officers, will establish a precedent for the other claims, and hence the Court must say what principle and what circumstances under the laws of Delaware regulate the creation, merger, etc., of corporations in such state, and *regulate* the *relation* of *stockholders* in such corporation to *each* other and to the corporations. This claim cannot be *established* and finally *adjudicated* by the *Alabama* courts, and *have due regard* to the *sovereignty* of the State of *Delaware* over all corporations created by it.”

In *Hogue v. American Steel Foundries*, 247 Pa. 12, 92 Atl. 1073, the Court held that an action by a stockholder, who had declined to consent to a reorganiza-

tion of defendant, a foreign corporation, and had retained his original stock, to recover accumulated dividends, involved an interference with the internal affairs of defendant, over which the courts of Pennsylvania had no jurisdiction. The Court said:

“The determination of the question thus raised would require us to investigate and determine the validity of the plan of reorganization, and would require us to ascertain and *pronounce* upon the *rights* of original stockholders, as *between themselves and their own corporation*. These questions are, we think, for the *New Jersey* courts to *determine*, as arising under the local law. If any wrong has been done to plaintiffs, by the process of reorganization, that wrong must be ascertained, and the remedy applied according to the law of the domicile of the corporation. The *action* of which plaintiffs here *complain* is *not* something which affects *merely* their *own individual* rights. It *concerns* the *rights* of *all* the *nonassenting holders of preferred stock*. The validity of the action taken by the company depends upon the legality of the reorganization proceedings, under which the old preferred stock, and the old common stock, were retired, and new stock of but one class was issued in lieu thereof. It seems quite clear that the prosecution of such an inquiry would involve interference with the management of the internal affairs of a foreign corporation.”

The contrary conclusion arrived at by the Ohio Supreme Court in this case and by the Iowa Supreme Court in *Frick v. Hartford Life Ins. Co.*, 159 N. W. 247, is predicated upon the erroneous assumption that if, in a suit of this character, the courts had no jurisdiction or power to determine the validity of assessments previously paid by a member and to take an accounting for the purpose of determining the amount of the excess of the assessments so paid and to render a money judgment against petitioner for the amount of the excess of the assessments found to have been paid upon such an accounting, *then the courts would have no jurisdiction in an action brought upon the certificate or policy by the beneficiary after the insured's death.* The courts in those cases, however, overlooked the fundamental difference and distinction between a suit by a *member* during his lifetime involving the validity or legality of assessments levied against him by the company and an action *on* the certificate or policy to recover the benefits promised thereby after the member's death. In an action by the beneficiary *on* the certificate or policy after the member's death to recover the benefits promised, the *subject matter* of the action is the *contract*, and its alleged *breach* by the company, and if the Court has jurisdiction of the defendant's person, it may, of course, proceed to a final determination of the cause even though there is

incidentally or collaterally involved the question of the validity of an assessment levied against the insured thereunder. On the other hand, in a suit by a member of the company during his lifetime to have the foreign court determine the validity of assessments previously levied against him by the company and for an accounting and money judgment for the amount of the alleged excess of such assessments, the subject matter of the suit is not only the legality and validity of acts performed by the foreign company in a foreign jurisdiction, but acts which affect all of the members in their relation to one another. In so far as the *foreign* court assumes to control these matters, it controls and ousts the *domestic* court. And not only that, but to the extent that the adjudications of the courts of the various jurisdictions conflict respecting the validity of the assessments, petitioner is ground between the upper and nether millstones. The courts in the cases already cited have recognized the difference between an action *on* the certificate by the beneficiary after the insured's death and a suit of the character here involved, on the question of jurisdiction.

In the Condon case, *supra*, the Court in this connection said:

“If this were a *suit on an insurance policy* to recover a *loss insured against*, it would be a case

within the jurisdiction of the courts of Maryland. In such a proceeding, it would be incumbent on the Court to construe the policy and to determine whether it had been forfeited or not, because it would have the authority to decide whether a recovery could be had. Necessarily, therefore, the *validity of any assessment*, and the inquiry as to whether an assessment was fraudulent would be a legitimate inquiry; because in a *suit on the policy* in Maryland the courts of this state *would not be called on to regulate, by injunction or otherwise, the government of a foreign corporation, but would be required merely to enforce the contract or award damages for its breach.* There is a broad difference between compelling a *foreign corporation, at the suit of a member, to conform its internal conduct to the views of a Maryland court*, and adjudging it, at the *suit of the beneficiary, liable in damages for a failure to comply with its contract of indemnity.*"

In the case of *Sauerbrunn v. Hartford Life Ins. Co.*, 220 N. Y. 365, 115 N. E. 1001, it is said:

"[7] That our courts might entertain jurisdiction of *an action brought against defendant to recover for the death of a member* and in such action to determine whether or not the policy was in force, the validity of an assessment made for nonpayment of which forfeiture was claimed, cannot be questioned. *Such an action does not correspond to the action at bar* wherein the court is invoked to exercise *visitorial powers* to review

and decree *how* the acts of a corporation which derives its authority from *the law of another state shall exercise such power.*"

And in the case of Howard v. Mutual Reserve, 125 N. C. 49, 34 S. E. 199, it was said:

"So, too, if this suit *was* for the recovery of the amount *due on the policy by the beneficiary*, if the defendant had declared the policy forfeited because of a failure to pay the increased assessments, the *matter would be within the jurisdiction* of our court. In *such* a suit, the courts would be compelled to pass upon the question as to whether the assessments were illegal and fraudulent, to interpret the policy, and to determine whether the amount of the policy could be recovered. In *such* a suit, the courts of North Carolina would *not be required to regulate by injunction* the internal management of a *foreign* corporation, but would be called upon simply to *enforce the contract of insurance* between the parties, or to assess and adjudge damages for its breach. *But the subject matter and the officers of the defendant are beyond the jurisdiction of our courts* in this case, and the remedy sought is not in *our power* to grant."

Nor does the fact that petitioner was licensed to do business as a foreign insurance company in Ohio confer upon the courts of that state the right and power to control its internal affairs. The internal

affairs of a corporation are within the exclusive sovereignty or domain of the state which created such corporation. As was said by the Minnesota Court in *Guilford v. Western Union Telegraph Co.*, 59 Minn. 332, 61 N. W. 324:

“The doctrine is well settled that courts will not exercise visitorial powers over foreign corporations, or interfere with the management of their internal affairs. *Such matters must be settled by the courts creating the corporation. This rule rests upon a broader and deeper foundation than mere want of jurisdiction in the ordinary sense of that word. It involves the extent of the authority of the state (from which its courts derive all their powers) over foreign corporations.*”

In case of *Howard v. Mutual Reserve Fund Life Assoc.*, *supra* (125 N. C. 49, 34 S. E. 199, the Court, in holding that the statute of North Carolina providing for service of process upon foreign corporations did not confer upon the courts of that state the power or jurisdiction to regulate or control the internal affairs of such a corporation, said:

“These provisions of our law had for their object the securing for suitors in our courts of the benefits of our own laws, and the conferring upon our courts jurisdiction to declare and enforce their rights when the matters which were

the subject of litigation were in their jurisdiction or the remedy sought could be granted. They were not intended to give our courts jurisdiction over the persons who are the officers of a foreign corporation residing in another state, and over the *internal management* of such corporations over which our courts would be powerless to exercise any control or to enforce obedience to any of their orders."

In *Tolbert v. Modern Woodmen of America*, 145 Pa. 183, the Supreme Court of Washington, in holding that because the statutes of that state authorized foreign insurance companies to do business therein did not confer upon the courts of that state extra territorial jurisdiction to interfere with the internal affairs of such a corporation, after quoting from *Taylor Mutual Reserve, supra*, said:

"This is of value in showing that the fact that the *statutes* of a state make provisions for *admitting* of *foreign* life insurance *associations* to do business therein, and for appointment of an agent upon whom service of process may be made, do not enable the courts of the state to exercise *extraterritorial* jurisdiction to the extent of controlling the internal affairs of such association."

In *New York Life Ins. Co. v. Head*, 234 U. S. 149, it was held that the license by Missouri of a foreign corporation to do business within its borders did not

confer upon the courts of that state the power or authority to regulate or control the acts of such corporation beyond its borders. The Court in that case, said:

“But when this reasoning is analyzed we think it affords no ground whatever for taking this case out of the general rule and making the distinction relied upon. This is so, as the proposition cannot be maintained *without holding* that because a state has power to license a foreign insurance company to do business within its borders and the authority to regulate such business, therefore, a state has power to *regulate* the business of such company *outside* its borders and *which* would otherwise be beyond the state's authority. A distinction which brings the contention right back to the primordial conception upon which alone it would be possible to sanction the doctrine contended for, that is, that because a state has power to regulate its domestic concerns, therefore it has the right to *control the domestic* concerns of other states. It is apparent, therefore, that to accept the doctrine it would have to be said that the distribution of powers and the limitations which arise from the existence of the constitution are ephemeral and depend simply upon the *willingness of any of the states* to exact as a condition of a license granted to a foreign corporation to do business within its borders that the constitution shall be inapplicable and its limitations worth nothing. It would go further than this, since it would require it to be

decided not only that the constitutional limitations on state powers could be set aside as the result of a license, but that the granting of such license could be made the means of extending state power so as to cause it to embrace subjects wholly beyond its legitimate authority.”

If, as the Ohio Court holds in this case, the courts of the states at large have the power in a suit of this character to determine the validity of assessments levied by petitioner against the members of its safety fund department, then an assessment may be valid in one state and invalid in another, and the equality and mutuality in the plan of insurance contemplated and provided for in these certificates will be utterly destroyed. The right of the courts of the foreign state to adjudicate respecting the validity of assessments in a suit by a member of a foreign company or association was repudiated and in effect denied by this Court in *Royal Arcanum v. Green*, 237 U. S. 531, 541, where the late Chief Justice White, in delivering the opinion of the Court, said:

“The contradiction in terms is apparent which would arise from holding, on the one hand, that there was a *collective and unified standard of duty and obligation on the part of the members themselves and the corporation*, and saying, on the other hand that the *duty of members* was to be tested isolatedly and individually by resort-

ing not to one source of authority applicable to all, but by applying many divergent, variable and conflicting criteria. In fact, their destructive effect has long since been recognized (*Gaines v. Supreme Council R. A.*, 140 Fed. 978; *Supreme Council R. A. v. Brashears*, 89 Md. 624, 43 Atl. 866). And from this it is certain that when reduced to their last analysis the contentions relied upon in effect destroy the rights which they are advanced to support, since an *assessment*, which *was one thing in one state and another in another*, and a *fund* which was *distributed by one rule in one state and by a different rule somewhere else*, would, in *practical effect*, amount to *no assessment* and no substantial sum to be distributed."

III.

A Court Cannot Control or Regulate the Acts of a Foreign Trustee in the Management of a Foreign Trust.

In the levy of assessments against Douds and other members of its safety fund department, petitioner was merely acting as trustee for its members, and the assessments when received are merely held in trust by it for the payment of the death losses for which the assessment was levied. The amount, method or manner of such assessments have to do with the administration and operation by petitioner, as trus-

tee, of this trust, over which the courts of Connecticut have sole and exclusive jurisdiction. It was so held by this Court in *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, in which it was said:

“Manifestly, the question as to the ownership and *proper administration* of the fund could not be left at large for collateral decision in *every suit on certificates* held by those who had failed to pay the assessment. For whether the members of the ‘Safety Fund Department’ are regarded as occupying a position analogous to that of shareholders, or are treated as beneficiaries of trust property in the hands of the company, as trustee, in the State of Connecticut—the courts of that state had jurisdiction of all matters relating to the internal management of the corporation (cases). It was for the court of the state where the company was chartered and where the Fund was maintained to say what was the character of the members’ interest—whether they were entitled to have it distributed in cash, or used in paying the next assessment, or retained as a fund for the prompt settlement of claims with the right and duty on the part of the company, as their trustee, to replenish the same by collections from succeeding assessments.”

In 22 Encyc. of Pl. & Pr., p. 21, it is said:

“A court of equity has no control over a trust fund where the trust was created and the trust fund delivered in another state of which the trustee is a resident.”

In *Lines v. Lines*, 142 Pa. St. 149, 21 Atl. 809, the Court, in holding that the courts of Pennsylvania had no power or jurisdiction to regulate or control the management of a trust estate located in New York, said:

“It is almost *needless to say* that the Court of Common Pleas of Northampton County (Pa.) *has no jurisdiction of a trust when both the trustee and the trust estate are in another state.*”

If, as was held by this Court in the *Ibs* case, *supra*, all questions appertaining to the proper administration by petitioner as the trustee of the Mortuary Fund are *within the exclusive jurisdiction* of the courts of Connecticut, then necessarily, these questions are *without the jurisdiction of other states*. The petitioner in levying these assessments was engaged in the *performance of its duties as trustee in Connecticut*, and complaints of members, the *cestui que trust*, should be determined, if the orderly administration of justice is to be preserved, by the courts of *Connecticut*, and not by the courts of Ohio. Whether or not petitioner exceeded its authority as trustee in the levy of the assessments complained of in this suit was for the Connecticut courts to decide, and the courts of Ohio, in holding and determining that the assessments in question were excessive and in rendering judgment against petitioner for the

amount of the alleged excess of these assessments paid by Douds, undertook to extend their jurisdiction and power beyond the territorial limits of that state and to usurp the power and jurisdiction which belonged exclusively to the State of Connecticut.

IV.

Connecticut Has Ruled Contrary to Ohio in the Matter Here in Controversy.

Not only have the Connecticut courts exclusive jurisdiction of the subject matter of this suit, but, as will appear from the opinion of this Court in *Hartford Life Insurance Co. v. Ibs*, 237 U. S. 662, 668, the Connecticut Courts have *already taken* jurisdiction and *are now exercising jurisdiction* over this trust *and the trustees*. As shown by the opinion of this Court in the *Ibs* case a suit was instituted in 1908 by one Charles H. Dresser and several other members of the Safety Fund Department against your petitioner in which it was claimed, among other things, that your petitioner was levying assessments against them which were excessive (page 667). In the decree in that suit, the Connecticut Court directed *how* the assessments should be levied, placed *limitations* upon petitioner, as trustee, in the levy of such assessments and directed that *if the assessments* levied should, notwithstanding, produce to the Mortuary Fund a

greater sum than was necessary, *the excess of such fund should be returned to the members by reduction in the amount of succeeding assessments*, and not as the Ohio Court holds in this case, by the return of such excess to the members in cash. In its consideration of the decree of the Connecticut Court in the Dresser case, this Court, in the Ibs case, said (237 U. S. 668):

“In reference to the mortuary fund, the trial court found that, though acting in good faith, the company, in making assessments, had overestimated the number of lapses in membership, and, consequently, the assessments had raised more than was needed to pay claims; that these excesses or margins had accumulated and amounted to many thousands of dollars; that these excess collections were in the mortuary fund, and ‘are now in constant use in the prompt payment of losses in advance of the receipt of the moneys to pay the same from the regular assessments, by which receipts the said fund is constantly reimbursed.

“The plaintiffs claimed it was improper and wrongful to accumulate these margins and to carry this balance in said mortuary fund, and claimed that said balance of margins should be distributed among the outstanding certificate holders, but it is held that it is proper and reasonable that the company should hold such fund for the purpose of enabling it to pay losses promptly, but it is not necessary for that pur-

pose that the company should hold more than the amount of one average quarterly assessment for the previous year.

“ * * * The mortuary fund arising as above described or from any other source, together with all income or interest thereon, belongs to the men's division of the Safety Fund Department, and the Insurance Company is reasonably entitled to hold the same as a necessary and proper fund for the settlement of death claims on the certificates of insurance in said department, and *that any excess above the average of the quarterly assessment for the previous year shall be distributed in diminution of assessments by crediting and applying such excess on account of the next succeeding assessment.*’ ”

Yet the Ohio Court, disregarding the exclusive jurisdiction possessed, invoked and exercised by the Connecticut Court, proceeds to determine what are valid assessments and having held these particular assessments invalid requires the repayment thereof *in cash*, and not by way of *credit on future assessments*—all quite contrary to the Connecticut Court's decree.

Now, which mandate shall this trustee obey? And, obeying one, how can it avoid, at least seemingly, contempt for the other? The petitioner is in the Straits of Messina, with Scylla on the one side and Charybdis on the other, with no chance to trim its sails so as to enter the sea of smooth sailing, unless this Court

shall say, as we think it should say, that judicial acts of a foreign state over a nonresident trustee already subject to the direction of a court of competent jurisdiction at the situs of the trust and the residence of the trustee, is not process of *law*, and, therefore, not *due* process of law, because to *assert* jurisdiction over a subject matter, jurisdiction over which lies exclusively with another court and which has already been lawfully exercised by such other court, is the mere *assertion* of jurisdiction and not the *exercise* of jurisdiction.

Unless the petitioner, being *controlled by* the Connecticut courts, is thereby *protected from contrary judgments and decrees* of courts of other jurisdictions (and that protection can only be had through this court), then it must submit to being rent asunder by the conflicting views of the various and variant courts of the different states as to how it shall levy assessments—a periodically recurring act necessary to the discharge of its trust. An assessment cannot be levied several ways or by several methods or formulas at one and the same time. It can only be levied in *one* of these several ways. If each state is left free to declare an assessment void unless levied as it may chance to fancy it should be levied, then the petitioner is required to do the impossible and levy each assessment in as many different ways as there are states and courts within these states and

its position becomes quite intolerable—and all because the jurisdiction exercised by Connecticut is impinged upon the courts of other states.

V.

The Accounting.

The Ohio Court refused to follow the cases heretofore cited which held that where accounting is necessary the foreign court cannot proceed. It undertakes to distinguish this case from the cases cited. The ground of the distinction is that in the cases cited an examination of the books and records of the foreign company *was necessary*. In this case (so says the Ohio Court) an examination of the books and records was *not necessary* **BECAUSE** in this case the *plaintiff* proved his contention that the assessments were excessive *without resorting to the company's books*.

Briefly, the Court holds that though the case be one in which an accounting *should* be had, yet if one party can, in a particular case, give evidence *tending to prove* his contention, this *evidence* changes the *character of the action*—it ceases to become an action for accounting—no accounting is necessary—and *therefore jurisdiction obtains in foreign court*.

We submit:

First. The action being necessarily one for accounting, it does not cease to be an action for ac-

counting because of an evidence introduced by either party.

Second. That in an action for accounting the defendant has a constitutional right to be exempted from *accounting in* a foreign jurisdiction, and this exemption should not be denied it, although the plaintiff may be able to offer *proof as to his contention* in the foreign jurisdiction. The defendant also has the right to offer *proof as to its contention*, and to make this proof from its *books and records at its domicile*, and is not required to leave its domicile to make that proof elsewhere.

Furthermore, it is the petitioner's insistence that the evidence in this case was insufficient to justify the finding of the Referee, to whom the cause was referred to take an accounting, and the judgment entered upon such finding, that the assessments were excessive, and that the excess thereof amounted to the sum of one thousand eight hundred fifty-seven dollars and fifteen cents (\$1,857.15).

The basis of Douds' complaint in this regard is that in the table of rates incorporated in the certificate there was no rate of assessment specified therein beyond the age of sixty, and that, therefore, he could not lawfully be assessed in excess of the rate of two dollars and sixty-eight cents (\$2.68) (the rate at age sixty), from and after reaching sixty years of age,

and that he was in fact assessed in excess of that rate after reaching that age.

The table of rates referred to is entitled in this certificate as the "Table of Graduated Assessment Rates for Death Losses for Every \$1,000 of a Total Indemnity of \$1,000,000"; and at the bottom of this table is the following provision (Rec., p. 17):

"These rates *decrease* in proportion as the total *indemnity* in force *increases* above one million dollars in amount, and are calculated so as to cover the usual expense of collecting."

The rates specified in this table are, therefore, the rates of assessment at each age therein for each individual death loss of \$1,000, upon the basis of one million dollars of outstanding indemnity, or insurance, in force at the time of the assessment, and if the indemnity or insurance in force exceeds one million dollars, the rate of assessment is proportionately decreased. Where there is more than \$1,000 of outstanding death losses to be assessed for, the rate of assessment is correspondingly increased.

Therefore, if but one death occurs on a certificate for \$1,000, during the quarter for which the assessment was levied, and the total indemnity or insurance in force is but one million dollars, the rate charged against the member, who is sixty years of

age, is two dollars and sixty-eight cents (\$2.68); but if ten deaths occur on policies of \$1,000 each, so that there is \$10,000 of death losses, with only one million dollars of insurance in force, then the rate of assessment is twenty-six dollars and eighty cents (\$26.80). If but one death occurs, representing a \$1,000 death loss, and there is ten millions of insurance in force, then as the assessment "decreases in proportion, the total indemnity increases above \$1,000,000," the rate will be one-tenth of \$2.68, or \$0.268, whereas if there are twenty deaths (representing \$1,000 each, or \$20,000.00), the rate would be twenty times \$0.268, or \$53.60.

Manifestly, therefore, if the assessment is levied in accordance with the terms of the certificate, it would be absolutely necessary to know (1) the amount of the outstanding death losses, (2) the amount of insurance or indemnity in force, and (3) the respective ages of the members holding such insurance at each of the assessment periods. What were the facts with respect to these several matters? The record is absolutely silent.

The plaintiff sued *on the contract* and alleged he had been assessed in an amount in *excess of that provided by the contract*.

His *proof* was that the assessments were levied in a manner different from that provided by the contract.

But there was no proof that by levying these assessments in a manner different from that provided in the contract he was required to pay an amount in excess of that which would have been demandable if the assessments had been levied in the manner provided in the contract. Whether the assessments actually levied were larger or smaller in amount than they would have been if they had been levied strictly in accordance with the contract, it is impossible to say. That would depend upon the amount of death losses, the amount of the insurance in force, and the ages of the members holding such insurance at each of the assessment periods. This could only be ascertained from an examination of the company's books and records. And such examination in invitum, can be had only at the domicile of the defendant corporation.

Even if the excessiveness of the assessments is to be determined by proved *practice* of the Company, and not by the *contract provisions* in respect thereto, the evidence is still *insufficient* to support the finding that they were excessive in the sum of \$1,857.15. The practice proved is set forth in the report of the Connecticut Insurance Department, introduced in evidence by plaintiff, as follows (Rec., p. 110):

“By an accurate calculation, the exact amount which will be produced by an assessment of one

rate, as published on the back of the certificate at the allowed age of member whose certificate is in force, is ascertained. This sum is then divided into the whole amount of death claims which have accrued in the quarter, and the quotient is the factor which we call the ratio. The ratio is the number of times the rate which it is necessary for each member to pay, in order to make up the full sum of death claims approved."

Assume that this is the practice. Then let us suppose, for instance, that the death losses to be assessed are \$1,000; that the amount of insurance outstanding is \$100,000, \$50,000 of which was held by members who are 39 years of age, at which age the rate is \$1.00 (Rec., p. 17), and that the remaining \$50,000 of insurance is held by members who are 59 years of age, at which age the rate is \$2.50 (Rec., p. 17).

The amount (on these assumptions) which would be realized by an assessment at one rate at age 36 would be $50 \times \$1.00$, or \$50.00, and at age 59 would be $50 \times \$2.50$, or \$125.00, or a total of \$175.00. Dividing the latter amount into the outstanding death losses of \$1,000, the quotient or "ratio" would be 5.7; which is the number of times the rate which the member would be required to pay for each \$1,000 of insurance held by him as his pro rata share of the outstanding death losses.

At the hearing before the Referee there was produced and identified, on the part of plaintiff, the "ratios" used by petitioner for each of the quarterly assessments complained of (Rec., p. 85). By multiplying the rate at age 60, i. e., \$2.68, by the ratio, he was able to show that the rate at which he was actually assessed varied from \$2.68 at age 60 to \$4.00 at age 65, from which time on it remained fixed at \$4.00 (Rec., pp. 39-43). But in arriving at the amount produced by an assessment of one rate in order to determine these ratios, the company assessed Douds, and every other members of age 60 and above, *at rates varying from \$2.68 at age 60 to \$4.00 at age 65*, and upwards, which necessarily resulted in a larger amount being realized as the proceeds of an assessment at *one rate* than would have been the case if the rate for members of 60 years, and above, had remained fixed *at \$2.68*, and consequently the ratios actually used by the company in the assessments complained of were smaller than they would have been had the assessments been based on the rate of \$2.68 for members of age 60, and above.

In other words, the levy of an assessment based upon the rate of \$2.68 for age sixty, and above, would produce a *smaller* amount as the *proceeds* of an *assessment of one rate*, and consequently a *higher* ratio, than would be the case where, as here, the assessment was based on rates varying from \$2.68 at age

sixty to \$4.00 at age sixty-five, and above. Manifestly, therefore, if it was improper for petitioner to assess Douds in excess of \$2.68 upon and after reaching age sixty, then necessarily the "ratios" used in determining and arriving at the amount of the alleged excess of these assessments were not the correct or proper "ratios." The correct ratios would have been higher than those actually used; how much higher, or what the difference in the amount of the assessment would have been, it is impossible to say, because the record is silent as to those facts which it is essential to know before the proper ratio could be determined, i. e., the amount of outstanding insurance, the respective ages of the members, and the amount of insurance held by them, and the amount of the death losses at each of the respective quarterly assessment periods throughout the twenty years during which Douds claimed that he was being unlawfully assessed. The ascertainment of this data would manifestly require an examination of petitioner's books and records covering this twenty-year period, *and this examination it can only lawfully be required to enter into at its domicile.*

Thus it is quite apparent that petitioner has been mulcted in a judgment, which should only be rendered after an *accounting had*, and in an action for an accounting, and this because although the plaintiff sued for an accounting, yet because, forsooth, at the hear-

ing he gave some evidence that would be pertinent on an accounting and thus proved (to an extent) his allegations, and the petitioner proved nothing; therefore it is held either that no accounting is necessary or one has been had.

An accounting means an examination of accounts and a conclusion based thereon.

Here there was no investigation of accounts, but a conclusion based on evidence that has nothing to do with accounts.

The petitioner, on the facts charged should doubtless be required to *account*, but it should only be so required in its domicile.

Respectfully submitted,

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INDEX.

| | |
|--|----|
| Beale on Foreign Corporations, Sec. 307..... | 11 |
| Castagnino et al. v. Mutual Reserve Fund Life Associa- tion, 157 Fed., 29..... | 15 |
| Clark and M. Private Corporations, Sections 864, 865.. | 11 |
| Condon v. Mutual Reserve, 98 Md., 99, 42 Atl., 944.... | 13 |
| Dresser v. Hartford Life Insurance Company, 80 Conn., 681 | 19 |
| Everhart v. Northwestern Life Insurance Company, 210 Fed., 520 | 14 |
| Frick v. Hartford Life Insurance Company (Iowa), 159 N. W., 247, 250, 251..... | 12 |
| Gaines v. Royal Arcanum, 140 Fed., 978..... | 16 |
| Hartford Life Insurance Company v. Ibs, 237 U. S., 665 | 13 |
| Mt. Vernon-Woodberry Cotton Duck et al. v. Alabama Interstate Power Company, 240 U. S., 30..... | 9 |
| Richardson v. Ainsa, Administrator, 218 U. S., 288- 289 | 9 |
| Royal Arcanum v. Green, 237 U. S., 531..... | 16 |
| Sauerbrunn v. Hartford Life Insurance Company, 220 N. Y., 363; 143 N. Y. Supp., 1009..... | 16 |
| Westminster National Bank v. New England Elec- trical Works, 3 L. R. S. (N. S.), 551, 555..... | 11 |



IN THE
Supreme Court of the United States

October Term, 1922.

| | | |
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| Hartford Life Insurance Company, Petitioner, | } | |
| vs. | | |
| Frank F. Douds, Herman J. Douds, and Rebecca E. McConkey, Executors, etc., | } | No. 265. |
| Respondents. | | |

| | | |
|---|---|----------|
| Hartford Life Insurance Company, Petitioner, | } | |
| vs. | | |
| Robert H. Langdale, | } | No. 271. |
| Respondent. | | |

BRIEF OF SOLICITORS FOR RESPONDENTS.

The following brief and argument will include both of the foregoing cases as they are of the same nature, involve the same questions, and the same proceedings have been had in each, and they may be treated together under

the same principles and authorities. We ask, pursuant to Paragraph 8 of Rule 26 that they may be heard together.

The plaintiff below, seeks to compel the defendant, insurance company, to observe, according to their terms, certain membership certificates, or policies, which he holds in the safety fund department of the defendant company; and to require from the insurance company to account for and pay back certain payments claimed by him to have been made in excess of those stated in his contract; and he also prays for an injunction to restrain the defendant from demanding and collecting alleged excessive payments, and from lapsing his membership.

The only distinction made between the two cases is that in the Langdale case, the policy holder being still in full life, has had his certificates or policies of insurance forfeited, by reason of non-payment of such excessive assessments charged against him by the defendant company.

In the first of the above entitled causes, Alonzo J. Doud, since the commencement of this action, has deceased, but he and his personal representative have complied with all the terms of his certificate or policy of insurance, and his action is distinct from the Langdale action in that he seeks to recover, in equity, the amount of his excessive payments, he having kept his insurance in full force.

I.

HISTORY OF THE TWO CASES.

The steps incident to the prosecution of these cases are here given.

Both actions were begun in the Court of Common Pleas in the month of November, 1916; the Doud case on the first, and the Langdale case on the thirteenth of that month. (Record, 3.)

In the month of December, 1916, the defendant specially appeared in the cause for the purpose of filing a demurrer to the jurisdiction. This demurrer was amended and thereafter argued and submitted.

In the month of May, 1917, the Court of Common Pleas overruled the demurrers and gave defendant until May 26, 1917, in which to plead to the petition.

The defendant thereafter pleaded specially to the jurisdiction.

In cause number 73462, the defendant, by original action in prohibition, commenced in the Supreme Court of Ohio, May 27, 1917, further tested the question of the jurisdiction of the Court of Common Pleas. Issue was joined by answer in that court and such answer was demurred to and the demurrer thereafter by the Supreme Court was overruled.

Error proceedings in the action in prohibition were begun in this court. In this action a motion was filed by the plaintiffs, who had then become a defendant in error

in such error proceedings, to affirm the judgment of the Supreme Court of Ohio, and on January 28, 1918, judgment of this court was given dismissing the proceeding in error in the Doud case. The memorandum opinion in that case will be found in 245 U. S., 641.

The cause was then remanded and when the mandate reached the Supreme Court of Ohio and from that court to the Court of Common Pleas, the issues were made up and the order of reference was made.

The cause was heard before the referee, and a voluminous report was made awarding an accounting to each of the plaintiffs. Exceptions were thereafter filed to the report of the referee and by the referee overruled. Upon the report of the referee being filed in the Court of Common Pleas exceptions were again taken thereto and argued before that court, and thereafter at the September Term, 1919, the report of the referee was approved and confirmed and judgment and decree accordingly entered. A bill of exceptions was taken thereto, allowed and signed, and petition in error filed in the Court of Appeals of Ohio.

The Court of Appeals affirmed the judgment and decree of the Court of Common Pleas. (Record, 56.) November 15, 1921, judgment and decree of the Court of Appeals affirmed by the Supreme Court of Ohio.

For purposes of brevity, without tracing the particular steps in the Langdale case, it may be stated that the same procedure in detail was adopted in that case as in the Douds case. It has also been carried from the Supreme Court of Ohio to this court, and jurisdiction of this court denied, *in certiorari*, at the October Term, 1918. (248 U. S., 562.)

From this point the two cases may be considered as identical and the discussion of the propositions involved will be made together.

POINTS, AUTHORITIES AND ARGUMENT OF SAME.

I.

**The Question of Jurisdiction of the Courts of Ohio is not
an Open One in These Cases.**

Each of these cases have been before this court on writ of error and motion for writ of certiorari to the Supreme Court of Ohio (245 U. S., 641; 248 U. S., 562). Jurisdiction thereof was denied.

The applications for the writs of prohibition were predicated on the allegation that the trial court did not have jurisdiction of the subject of the action. The judgments and decrees of this court leaves the jurisdiction of the lower courts sustained. "The denial of the petition for a writ of prohibition is a final judgment in the suit and concludes the parties thereto." **Mt. Vernon-Woodberry Cotton Duck Co. et al. v. Alabama Interstate Power Company**, 240 U. S., 30.

"The decision of the Federal Supreme Court on a former appeal, that the lower court had jurisdiction of the case, is conclusive on a second appeal." **Richardson v. Ainsa, Administrator**, 218 U. S., 288-289.

II.

The Relief Here Sought not an Interference with the Internal Management of a Corporation.

If we are correct in the former proposition that the jurisdictional questions have been determined by this court, the proceedings of the lower courts in the assertion of such jurisdiction should likewise, by this court, be denied review, or if reviewed should be affirmed. (See discussion of jurisdiction in referee's report, Doud Record, pages 46-47.)

But as petitioner's argument, denying jurisdiction in the lower courts, is based upon "Interference with the Internal Affairs of Petitioner," and "Impossibility to enforce the decree of the Ohio courts," (Petitioner's brief, pages 14-39; De, pages 39-42) we deny that the record sustains either of such contentions.

It was remarked by the Supreme Court of Ohio (Record, page 148), on this point, as follows:

"If the developments of the hearing before the referee in the case at bar did not refute the assumption that a determination of the issues in this case required an exhaustive visitation and examination of the books of the company, and if the judgment in this case operated to regulate the discretion and internal management of the affairs of the company, we would feel constrained to follow the reasoning and conclusion of the courts in those cases and the authorities there cited. But in the case at bar the referee was able to and did make an accounting between the plaintiff in error and the defendant in error upon the contract of insurance and the assess-

ment calls issued to the defendant in error by the plaintiff in error, and upon the printed ratio for each such call and the rule for determining such ratio issued by the secretary of the plaintiff in error and supplied by a former general agent of the company."

For referee's findings thereon see Record, page 109.

The method of computation was furnished by the petitioner (Plaintiff's Exhibit "E," Doud Record, page 115; Plaintiff's Exhibit "F," Doud Record, page 116.)

There was existing no necessity for an elaborate examination of the "internal affairs of the company," in making the computation, as shown by the testimony of George D. Fry, general agent of the company at the time the policies were written. He made the computation according to the petitioner's own rule. (Doud Record, pages 117-124.)

Interference with the internal affairs of a foreign corporation is a question of fact. This is thus found against the company by the referee upon the testimony of its own general agent, and so declared by the Supreme Court of Ohio.

What constitutes interference with the internal management of a corporation is shown in *Westminster National Bank v. New England Electrical Works*, 3 L. R. A. (NS) 551, 555.

Citing *Beale, Foreign Corporation*, Section 307; *Clark and M. Private Corporation*, Sections 864, 865:

"It cannot be controverted that a foreign corporation, legally made a defendant in an action upon a contract which it had apparent authority to make, cannot escape liability thereon upon the mere ground

that it is a foreign corporation. In such a case it enjoys no immunity or privilege not possessed by domestic corporations or individuals. If it has legally bound itself by a contract with a plaintiff who sues in his own right, and not as a stockholder or director of the corporation, the jurisdiction of the court to pronounce judgment against it cannot be questioned. The determination of its liability involves its external legal relations to one not in any way officially connected with it. * * *

“The question relates, not to its internal management or affairs, but to its obligations to others arising from the prosecution of its legitimate business; and ordinarily those obligations are enforceable wherever the corporation can be made a party to the action.”

Frick v. Hartford Life Insurance Company (Iowa),
159 N. W., 247, *supra*, 250-251:

“The defendant has used a certain ratio on each assessment levied by it. The essential fact in taking this accounting asked by this plaintiff was simply the proving of that ratio in each particular instance; that is the ratio actually used by the defendant in each particular instance. The determining of this ratio actually used in each particular instance **in no way required the overhauling of the internal affairs of the defendant corporation**, but simply involved the proving of the fact as to what the defendant had actually done. That fact could have been proven, of course, by an examination of the defendant's books and records, but the plaintiff found another way of proving these facts as the decree of the court shows that it had these facts before it when it entered the decree. From the facts which the plaintiff was able to produce in evidence before the court in proving up his case, the court was able to take this accounting itself without the necessity of compelling the production of books and papers, or with-

out the necessity of referring the matter to a referee. It is apparent, therefore, that no interference with the internal management of the affairs of the defendant corporation was required."

The petitioner relies upon **Condon v. Mutual Reserve**, 89 Md., 99, 42 Atl., 944, and **Hartford Life Insurance Company v. Ibs**, 237 U. S., 665. Examination thereof shows they are not authorities herein.

In **Condon v. Mutual Reserve**, in addition to the other relief asked for, a receiver was also sought.

No receiver is asked for in this case, for a foreign company, nor could there well be.

Furthermore in that case, the assessments were to be made

"at such rates according to the age of each member, as may be established by the said Board of Directors. It was furthermore declared that the contract should be subject to all the provisions and stipulations contained in the constitution and by-laws of the association, with the amendments made or that may hereafter be made thereto."

This provision placed in the hands of the directors a broad discretionary power and the right by the subsequent adoption of by-laws, to change the assessments. This was a matter discretionary with the directors and which discretion could not be controlled by a foreign court.

This decision is one of many which might be cited from cases determined in favor of mutual insurance companies or fraternal beneficiary societies, when the right to modify the contract is reserved to the company by the

express provisions of the by-laws or the terms of the policy certificate.

There is no claim made here that any such provision is contained in the by-laws or in the certificate in the instant case.

In *Hartford Life Insurance v. Ibs*, the question involved was whether the appellee was bound by the decision of the Supreme Court of Connecticut in *Dresser v. Hartford Life Insurance Company*, she not being a party, the action in Connecticut being a representative action. The question determined in the *Dresser* case being that the insurance company had the right to maintain a mortuary fund and use the fund to pay death losses.

Eliza Ibs claimed that as she was a resident of the State of Minnesota, and not a party to the *Dresser* case in Cincinnati, she was not bound by the decree in that case.

The question arose on the full faith and credit provision of the Federal Constitution. It was held by the United States Supreme Court, that, as the suit was brought against the company by a number of certificate holders for the benefit of all, the company had the right to pay its death claims in the manner provided and that the decree of the Connecticut court having been rendered in a representative suit, was proper evidence in a suit brought by a beneficiary against the company upon its certificate. In the case at bar, the full faith and credit provision of the constitution is not involved, but further in the *Dresser* case the Supreme Court of Connecticut held that this company had no right or authority to in-

crease the rate because it would be violative of the terms of the policy.

That opinion, as well as the opinion in the Dresser case, does not in any way militate against the respondents.

In the case of **Everhart v. Northwestern Life Insurance Company**, 210 Federal, page 520, cited in relator's brief, page 10, the action was for an accounting into the entire operation of the company and the method of handling its funds. The petition sought an accounting upon policies of every kind issued by the company. It also sought an injunction against the officers of the company and for a receiver to take charge of the fund and to distribute the same among the various policy holders.

It was held that this involved the internal management of affairs of the corporation, and the relief was denied. That court, by Judge Day, said:

"If this were a suit asking only for the interpretation of a policy of insurance the complainants might well have recourse to this court because it is only just and fair that a citizen of Ohio who takes a policy in a foreign corporation, after the company has agreed that service of process in Ohio might be made upon it, have their resort to the courts of Ohio for redress."

It seems to us that is what the plaintiff in the case at bar is seeking to do; that is to have his rights interpreted under the contract and preserved.

It is very obvious that in all these classes of cases the relief sought went far beyond the relief sought in this case.

In *Castagnino et al. v. Mutual Reserve Fund Life As-*

sociation, 157 Fed., 29, the C. C. A. of the 6th Circuit held:

"It is not necessary to take the view that, in order to construe and enforce a policy, there must be interference with the internal management of the company. The internal management will go on as before, and there will be no interference with the constitution and by-laws or with the lawful authority of the officers of the corporation. In construing a policy it is not necessary to interfere with the proper discretion of the officers. Where there is discretion, the officers will be allowed full range; it is only where there is no discretion and the act is clearly unauthorized and wrong that the law will interfere."

That is exactly the case at bar.

Gaines v. Royal Arcanum, 140 Fed., 978, and **Royal Arcanum v. Green**, 237 U. S., 531, might also be cited.

This, and all similar cases cited from fraternal insurance company law are not in point because each and all of such companies retain in their by-laws and certificates the express authority **to vary the contract** by the subsequent enactment of by-laws including the right and authority to increase the size and amount of the assessments.

These are the leading cases relied upon by the petitioner, excepting the case of **Sauerbrunn v. Hartford Life Insurance Company**, 220 N. Y., 363. We cite the same case in 143 N. Y. Supp., 1009. We concede that the Court of Appeals of 220 N. Y. Reports, 363, has reversed the Supreme Court in the foregoing case, **but solely** upon the question of lack of jurisdiction. It does not affect the language used by the Supreme Court of New York in

commenting upon the requirement of the defendant company to adhere to the table of rates endorsed upon the policy and made a part of it. The question of jurisdiction of the courts of Ohio is not an open one, we insist, to be considered.

However, there are the following distinctions to be made between the instant case and the Sauerbrunn case, as shown by the opinion at 220 N. Y. Reports, 363:

(a) Defendant here has answered and submitted the issue to the court by answer. In the Sauerbrunn case the defendant did not answer (*supra*, page 366).

(b) The present case was heard on the evidence. The Sauerbrunn case was not so heard. (Page 366.) No evidence was offered by the company. The defendant did not appear by counsel, here it did appear by counsel.

(c) In the Sauerbrunn case it appeared that the order and decree of the Supreme Court of the State of New York could not be enforced against the corporation **without its consent**. Here it can be enforced by virtue of the statute governing foreign insurance companies.

When the court comes to consider the case of *Frick v. The Hartford Life Insurance Company*, 155 N. W. 247 (Iowa), the court will adopt the reasoning of the Supreme Court of Iowa in preference to that of the Court of Appeals of New York, should there be an apparent conflict between the two. Observe the following quotation from the opinion in the Iowa case:

“From the facts which the plaintiff was able to produce in evidence before the court in proving his case, the court was able to take the accounting itself, without the necessity of compelling the produc-

tion of books and papers. * * * It is apparent, therefore, that no interference with the internal management of the defendant corporation was required."

The whole argument of the Court of Appeals of New York in the Sauerbrunn case proceeds upon the theory that the accounting cannot be had without the presence of the books and papers of the defendant company, and that the decree of the court could not be enforced. Both of these results are shown to be in the instant case, without foundation in fact or in law so far as applied to the situation of these plaintiffs, residents of the State of Ohio.

As to the second contention of the petitioner regarding the inability of the courts of Ohio to enforce its decree, this is fully answered by the Supreme Court of Ohio by a review of the statutes of Ohio in that regard. (Bottom page of Record, 150, 151.)

Petitioner devotes eight pages of its brief in challenging the accuracy of the method of accounting adopted by the referee and approved by the Ohio courts. (Petitioner's brief, pages 46-54.)

We have pointed out that the method of computation adopted by the referee was from the rules promulgated by the insurance company and computation made by its general agent therefrom. But independent thereof, what merit can there be in petitioner's contention **when it offered no evidence whatsoever at the hearing of the causes?** An argument to this court by the insurance company to disregard a computation made pursuant to its own rule and by its own agent, without offering any evidence to rebut the same savors of a lack of ethical, as well as legal consideration.

III.

Consideration of Dresser v. Hartford Life Insurance Company, 80 Conn., 681.

The policy in question provides a table of graduated assessment rates, which are fixed and definite, as follows (Record, page 100): "These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting." In the above case, 80 Conn., 681, the Supreme Court of that state held that the company in making assessments is bound by the tables of rates stipulated in the policy, and cannot above the age of sixty years levy an assessment in excess of \$2.68 under the contract in question. In construing the contract, a duplicate of those involved herein, that court said: "It is expressly stated that these ratios will decrease as the total amount of the outstanding insurance increases. **It is not suggested that they can ever be increased. It must be held that they cannot.**"

We do not deny, as was done in the Ibs case (237 U. S., 665), the binding force and effect of that decision by that court, upon these respondents. We rather invoke the rule against the company, as above quoted. We refer this court to an expression of the Supreme Court of Ohio (Record, page 151), as follows:

"The plaintiff in error in disregard of such decision, has placed upon the contract an interpretation which permits it to do that very thing that that court (the Supreme Court of Connecticut) declared

it could not do. Since the plaintiff in error has so lightly regarded the courts of its own state in this respect, its contention that it ought not to respond to the process of a court other than courts of Connecticut does not appeal to the conscience of this court."

As a matter of fact, petitioner had blanks prepared (Exhibit "A," Record, 125) for the purpose of having the policy holders sign the same agreeing to the excessive assessments. Its agent, (Record, page 118) was directed to present to the plaintiffs to have them agree to the four dollar (\$4.00) rate of assessment instead of two dollars and sixty-eight cents (\$2.68), but they each objected to signing or consenting to any such rider upon their policy. What inference should be drawn therefrom?

In conclusion we consider it but fair argument to give to this court the apparent motive of the company in carrying out this exhausting litigation with its policy holders for more than seven years. By examination of the so-called Trustees' Contract (Record, 33 et seq.), it appears that if the policy holders cease paying, surrender their policies, or sever the contractual relations between the petitioner company and themselves, and if the safety fund should fall below one million dollars (\$1,000,000.00), it becomes the absolute property of the petitioner company. Its last published report, December 31, 1921, shows it to have a balance of \$1,000,966.50. Therefore, it would follow, as commented upon by the Supreme Court of Ohio, (Record, p. 150) "If we adopt the theory of the plaintiff in error that under the contract, notwithstanding

the table of rates expressly made a part thereof, it may make any assessment in excess of such rate necessary to pay the death claims accruing under the safety fund department of the company, it will logically follow that the rate may be increased as the number of outstanding policies decreases until the point is reached **where there is but one assessable policy outstanding**, which may be assessed the full amount of the death claims then existing, and when that policy holder dies there shall be paid from the million dollar safety fund the amount of such policy less certain specified items of expense, and the balance of the safety fund, amounting to approximately \$999,000.00, will become the absolute property of the plaintiff in error, and while the disposition of the safety fund is not before this court at this time, and probably never can be before the courts of this state, yet in arriving at a construction of the contract within the jurisdiction of this court, the effect of any proposed construction concededly without its jurisdiction is a proper subject for consideration in so far as it has a bearing upon the contract within its jurisdiction."

Under the circumstances the right of a court of equity to grant the relief prayed, is beyond question. The judgment and decree of the Supreme Court of Ohio should be affirmed with costs.

Respectfully submitted,

SMITH W. BENNETT,

HUGH M. BENNETT,

Solicitors for Respondents.

Columbus, Ohio.

Supreme Court of the United States

OCTOBER TERM, 1921.

| | |
|---|-------------|
| Hartford Life Insurance Company, Petitioner, | } No. _____ |
| vs. | |
| Frank F. Douds et al., Executors of Alonzo J. Douds, etc., | |
| Respondents. | |

| | |
|---|-------------|
| Hartford Life Insurance Company, Petitioner, | } No. _____ |
| vs. | |
| Robert H. Langdale, | |
| Respondent. | |

MOTION OF RESPONDENTS AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

RESPONDENTS' MOTION.

Now come the respondents and move the court to dismiss the petition of petitioner for writ of ceritorari in each of the above entitled cases on the grounds:

1. That it is manifest from the transcript of the record filed herein by the petitioner, and upon consideration of the petition for the writ of certiorari that its proceeding was taken for delay only, and the questions on which the decision of the case depend are frivolous.

2. That the record shows an answer was filed by the respondents presenting issues which were and are independent of any federal question, and which were considered by the Supreme Court of Ohio and decided against said petitioner.

SMITH W. BENNETT,
Solicitor for Respondents.

BRIEF OF ARGUMENT OF RESPONDENTS.

STATEMENT OF CASE.

The foregoing motion and the following brief and argument will include both of the foregoing cases, as they are of the same nature and the same proceedings have been had in each of the cases, and they may be and have heretofore been heard together, involving the same principles and authorities. The respondents seek to compel the petitioner, insurance company, specifically to perform, according to their terms, certain membership certificates or policies which they hold in petitioner company; and to require from the company to account for and pay back certain payments claimed by them to have been made in excess of those agreed to in their contracts. They also pray for an injunction to restrain the petitioner herein from demanding and collecting alleged excessive payments and from lapsing their membership.

The only distinction between the two cases is that in the Langdale case, the policyholder being still in full life, has had his certificates or policies of insurance forfeited by reason of non-payment of excessive assessments charged against him by the petitioner company.

In the Douds case, Alenzo J. Douds, since the commencement of the action has deceased, but he and his personal representative have complied with all the terms of his certificate or policy of insurance, and his action is distinct from the Langdale action in that he seeks to

recover in equity, the amount of his excessive payments, he having kept his insurance in full force.

The actions were filed in the month of November, 1916, in the Court of Common Pleas of Franklin county, Ohio.

The table of rates contained in the respective policies provide that the plaintiff below should pay certain graduated assessments until he arrived at the age of 60 years, at which age he was required to pay \$2.68 per payment of each \$1000 of insurance; that after said age was reached said rate of \$2.68 per assessment, by the language of the policies, **are to remain fixed and constant.** That the respondents were each compelled to pay an excessive rate of \$4.00 per assessment from and after the time they arrived at 60 years of age.

The steps incident to the prosecution of these cases are here given so as to advise the court that these proceedings are taken for delay only and that the questions relied upon by the petitioner are frivolous, and this court has heretofore refused to entertain either of said causes.

A. Both cases were begun in the Court of Common Pleas in the month of November, 1916.

B. In December, 1916, the insurance company, specially appearing in the cause, filed a demurrer to the jurisdiction. This demurrer was special and thereafter was argued and submitted.

C. In May, 1917, the Court of Common Pleas overruled the demurrers and gave defendants until May 26, 1916, in which to plead to the petition.

D. The defendant company thereafter pleaded specially to the jurisdiction.

E. The defendant company, during the pendency of the action in the Court of Common Pleas, began an original action in prohibition in the Supreme Court of Ohio, May 27, 1917, and that court decided the question of the jurisdiction of the Court of Common Pleas. Issue was joined by answer in the Supreme Court, demurrer was filed to the answer, and the demurrer thereafter by Supreme Court, at the September Term, 1917, **was overruled.**

F. Error proceedings were then begun in the Supreme Court of the United States to the judgment of the Supreme Court of Ohio. In that action a motion was filed by these respondents, who had then become defendants in error in such error proceedings, to affirm the judgment of the Supreme Court of Ohio. On January 28, 1918, this court dismissed the proceeding in error. The memorandum of opinion in the case is found in Vol. —, U. S. Supreme Court Reports, page —, under date of March 15, 1918.

G. The cause was then remanded, the issues were made up in the Court of Common Pleas and an order of reference was made to a referee to take the evidence and report thereon his conclusions of law and fact.

H. The cause was heard before George B. Okey, Esquire, referee, and a voluminous report was made finding for each of the plaintiffs below. Exceptions were thereafter filed to the report of the referee, and by the referee overruled. Report being filed in the Court of Common Pleas—exceptions were again taken thereto and argued before that court. At the September Term, 1919, the report of the referee was approved, affirmed, and judg-

ment and decree accordingly entered thereon. A bill of exceptions was taken thereto, allowed and signed and petition filed in the Court of Appeals of Franklin county.

I. Without tracing the particular steps in the Langdale case, with dates as above set forth, it may be stated that the same procedure was adopted in that case as in the Douds case, which has also been carried through the Supreme Court of Ohio and the Supreme Court of the United States, where the judgment of this court was entered dismissing the same. (See Vol.——, page——, of the U. S. Supreme Court Reports.) Each of the foregoing cases were heard before the same referee and while the amounts differ in the respective findings and decree, yet the same facts and questions were involved.

J. The Court of Appeals of Franklin county, Ohio, affirmed the decree of the Common Pleas Court.

K. The Supreme Court of Ohio affirmed in an elaborate opinion the decree of the Court of Appeals of Franklin county. (See Vol. —, Ohio Supreme Court Reports, p. —.) These proceedings are again brought in this court for a writ of certiorari, which should be denied, for the following reasons:

1. The Hartford Life Insurance Company, by the practice complained of, violated its express contracts which fixed the assessment at \$2.68 per assessment per \$1000, by raising the same to \$4.00 per assessment without the consent of the assured.

2. The Common Pleas Court of Franklin county, Ohio, had complete jurisdiction of the parties and the subject matter and such jurisdiction continued in the other courts of the State of Ohio.

3. The life insurance company, although organized

under the laws of Connecticut, was admitted to the State of Ohio to engage in its business therein, subject to the laws of the State of Ohio, and its contracts are within the protection of the courts of that state. Service of summons was made upon it pursuant to Section 9369, G. C., and 9380, G. C. There is no federal question presented.

4. The Supreme Court of Connecticut under whose laws the petitioner was created, has construed the contract in question and decided that the assessment cannot be increased above the amounts stated in the policy, without the consent of the assured. *Dresser v. Hartford Life Insurance Company*, 89 Conn, 681, from which we quote:

"The company could not increase the amount of the mortality clause above the amount stated in the application for insurance made a part of the certificate * * *

(Page 708) "It is expressly stated that these ratios will decrease as the total amount of outstanding insurance increase. There is no suggestion that they can ever be increased. **It must be held that they cannot.**" There is no question of "full faith and credit," herein, as in *Insurance Co. vs. Barker*, 245 U. S. 146.

5. These cases present merely a question of a corporation foreign to the state of Ohio, but admitted to do business in Ohio, violating its contracts therein, and by this proceeding seeking to divest the courts of Ohio of jurisdiction over it.

We append the following citation of authorities pertinent to the foregoing points:

State of Ohio on relation of Hartford Life Insurance Co., plaintiff in error, vs. Alonzo J. Douds, et. al., No. 581, United States Supreme Court, Vol. 245; pages 641, 2;

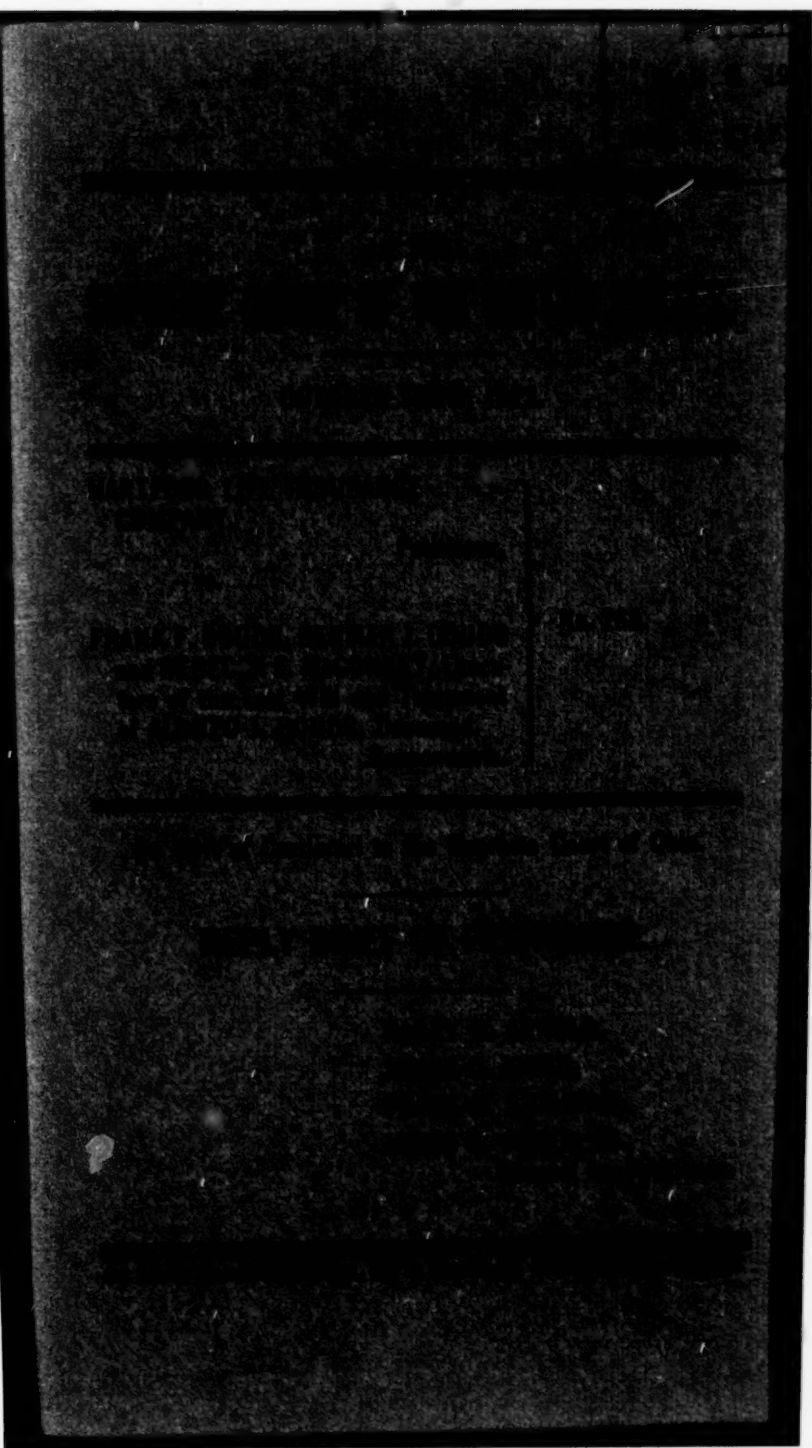
- Hartford Life Insurance Co. v. Robert H. Langdale, 583 United States Supreme Court, Vol. 248, page 564;
 Hartford Life Insurance Co. vs. Johnson, 249 U. S. 490-5;
 Frick vs. The Hartford Life Insurance Company, 159 N. W. 247;
 Harrison vs. The Hartford Life Insurance Company, 118 N. Y. Supp., 401;
 Dresser vs. The Hartford Life Ins. Co., 80 Conn., 681;
 Westminster National Bank vs. New England Electrical Works, 3 L. R. A. (N. S.) 551, page 555;
 Guilford vs. Western Union Tel. Co., 59 Minn., 332 (50 Am. St. Rep., 407);
 Eberhard vs. Mutual Life (D. C.) 210 Fed. 520;
 Pfefer vs. Hartford Life Ins. Co. Niblae, Benefit Societies & Accident Insurance, 2nd Edition, p. 475;
 General Code of Ohio, Sec. 9435.
 General Code of Ohio, Sec. 9442.
 Pearson vs. K. T. and M. Indemnity Co., 114 Mo. App., 283;
 Covenant Mutual Life Association vs. Tuttle, 87 Ill. App. 309;
 The Covenant Mutual Life Association of Illinois vs. Kentner, 188 Ill. 431;
 Castagnine vs. Mutual Reserve Fund Life Association (C. C. A., Sixth Circuit), 157 Fed. 29;
 Life Ins. Co. vs. Bernard, 33 O. S., 449.

CONCLUSION.

The motion of the respondents should be granted and the petition for the writs of certiorari should be denied.

Respectfully submitted,

SMITH W. BENNETT,
 Solicitor for Respondents.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

HARTFORD LIFE INSURANCE
COMPANY,

Petitioner,

vs.

FRANK F. DOUDS, HERMAN J. DOUDS
and REBECCA E. McCONKEY, Execu-
tors of the Last Will and Testament
of ALONZO J. DOUDS, Deceased,
Respondents.

No. 265.

On Writ of Certiorari to the Supreme Court of Ohio.

REPLY BRIEF OF PETITIONER.

MAY IT PLEASE THE COURT:

It is contended by respondents that the denial by this Court of the former petition for a writ of error in this case, and likewise the petition for certiorari in the Langdale case, to review the judgment of the Supreme Court of Ohio in denying petitioner's application for a writ of prohibition to restrain the trial court from entertaining jurisdiction of these suits, constituted a final judgment that the courts of Ohio

had jurisdiction of the subject matter of these suits and that the question is no longer open for review by this Court. This contention is, we submit, without merit. The petition for the writ of error to review the judgment of the Supreme Court of Ohio denying the petitioner's application for a writ of prohibition was denied by this Court because the right, if any, to a review of that judgment was by certiorari, and not by writ of error (*Hartford Life v. Douds*, 245 U. S. 641). No reason was given by this Court for its denial of the petition for certiorari in the *Langdale* case (*Hartford Life v. Langdale*, 248 U. S. 562).

The holding of the Ohio Supreme Court in denying the petition for a writ of prohibition in these cases (*State ex rel. Hartford Life Ins. Co. v. Douds*, 118 N. E. 1086) was predicated upon prior decisions of that Court holding that the question of the jurisdiction of the Ohio courts over the subject matter of these suits was reviewable upon an appeal from a final judgment; in other words, that *prohibition* was *not the proper remedy to secure a review of the action of the trial court in overruling petitioner's demurrer to respondents' bill of complaint on the ground that the courts of Ohio were without jurisdiction of the subject matter of these suits, and the fact that upon an appeal from a final judgment against petitioner the Ohio Supreme Court entertained jurisdiction of such appeal and determined*

the question of jurisdiction of the courts of Ohio over the subject matter of these suits, shows conclusively that its ruling in the prohibition proceedings was not a final judgment upon that issue, otherwise it would not have considered or determined the merits of the jurisdiction question upon such appeal. Clearly, therefore, as the judgment of the Ohio Supreme Court denying the petitioner's application for a writ of prohibition was not a final judgment in the case, this Court could not review that judgment either upon a writ of certiorari or upon a writ of error, which probably was the reason this Court refused to grant the writ of certiorari in the Langdale case.

But be that as it may, it is well settled that the denial of either a petition for writ of error or a petition for certiorari by this Court constitutes no ruling by this Court upon the merits of the case, and does not preclude the Court upon a subsequent writ of error, or certiorari, from reviewing the judgment of the State Court.

In the recent case of *United States v. Carver*, 43 Sup. Ct. Rep. 181, 182, the Court said:

“The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times.”

See, also, to the same effect, Hamilton Brown Shoe Company v. Wolfe Brothers, 240 U. S. 251, 258.

Respectfully submitted,

HARRY B. ARNOLD,
JAMES C. JONES,
FRANK H. SULLIVAN,
JAMES C. JONES, JR.,
Counsel for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

**HARTFORD LIFE INSURANCE
COMPANY,**

Petitioner,

vs.

**FRANK F. DOUDS, HERMAN J.
DOUDS and REBECCA E.
McCONKEY, Executors, etc.,**

Respondents.

No. 265.

**HARTFORD LIFE INSURANCE
COMPANY,**

Petitioner,

vs.

ROBERT H. LANGDALE,

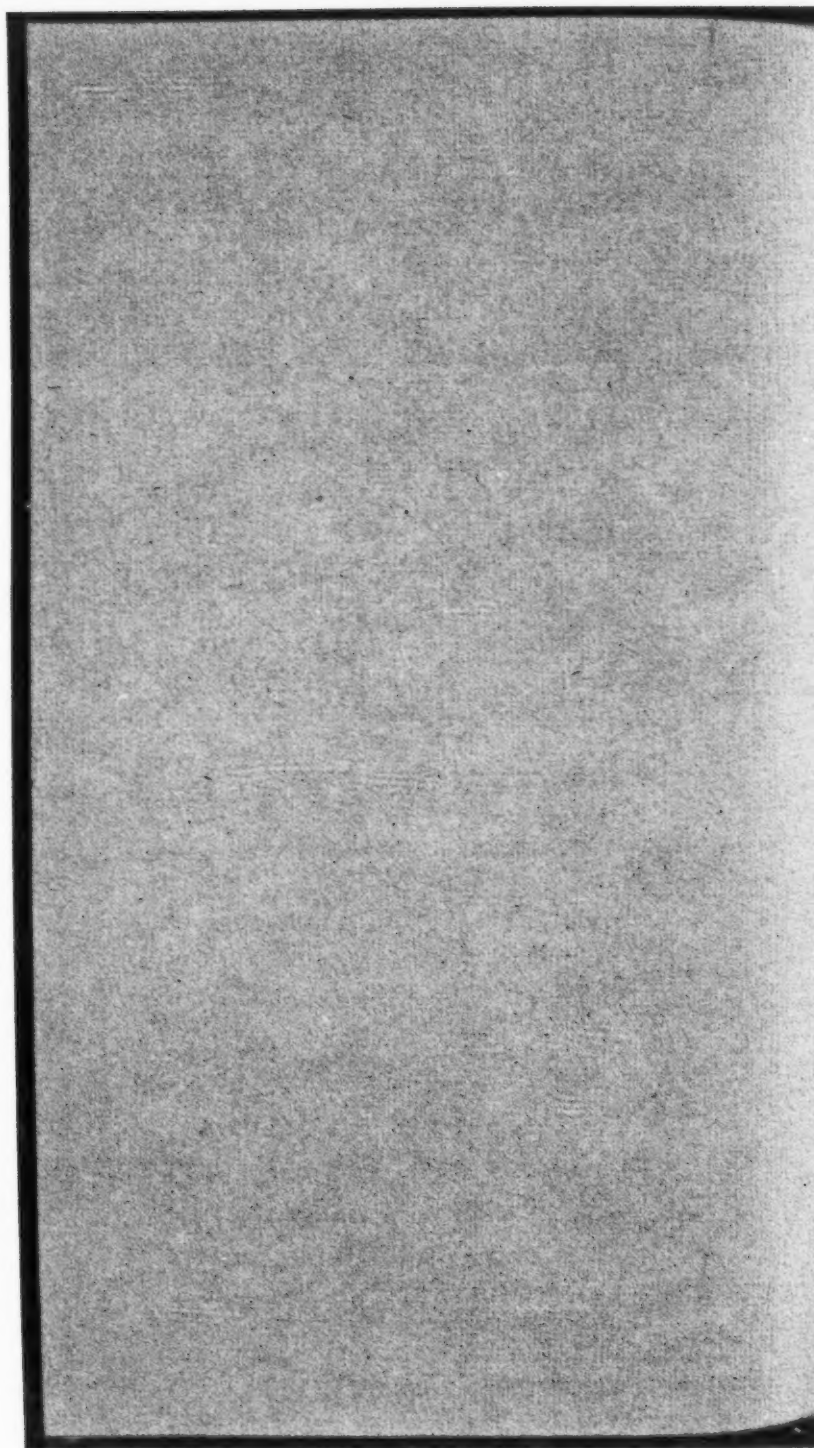
Respondent.

No. 271.

On Writ of Certiorari to the Supreme Court of the
State of Ohio.

**SUGGESTIONS OF PETITIONERS IN OPPOSI-
TION TO RESPONDENTS' MOTIONS TO
AFFIRM JUDGMENT.**

**LON O. HOCKER,
J. C. JONES, JR.,**
Counsel for Petitioners.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

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| HARTFORD LIFE INSURANCE COMPANY, | Petitioner, | } No. 265. |
| vs. | | |
| FRANK F. DOUDS, HERMAN J. DOUDS and REBECCA E. McCONKEY, Executors, etc., | Respondents. | |

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|-------------------------------------|-------------|------------|
| HARTFORD LIFE INSURANCE COMPANY, | Petitioner, | } No. 271. |
| vs. | | |
| ROBERT H. LANGDALE, | Respondent. | |

On Writ of Certiorari to the Supreme Court of the
State of Ohio.

**SUGGESTIONS OF PETITIONERS IN OPPOSITION
TO RESPONDENTS' MOTIONS TO
AFFIRM JUDGMENT.**

The respondents have filed a motion to affirm the judgments of the Ohio Supreme Court, in the above named causes, on the ground that the *writs of error* allowed in said cases were taken for delay only, and

that the questions on which the decision depends are frivolous. There were no *writs of error* allowed herein. On the contrary, these cases are here on writs of certiorari allowed by this Court to the Supreme Court of Ohio.

We find nothing in the rules which warrants the filing of a motion for the affirmance of a judgment on the ground that the writ of certiorari was granted by this Court for the purpose of delay only, or that the questions involved are frivolous. The granting of a writ of certiorari by this Court is discretionary, and when such a writ is granted there is presumably some merit in the questions involved.

We will not at this time enter into a discussion of the constitutional questions here involved. The Court will find these questions considered and discussed in the brief filed by petitioner in support of its petition for the writs of certiorari. That the questions involved are meritorious is manifest from the fact that the New York Court of Appeals in *Sauerbrunn v. Hartford Life Insurance Company*, 220 N. Y. 363, 115 N. E. 1001, and the Supreme Court of Missouri in *State ex rel. Hartford Life Insurance Company v. Shain*, 245 Mo. 78, which were similar to the suit here involved, hold, contrary to the Ohio Supreme Court in these cases, that the courts of those states

had no jurisdiction of the subject matter of the suit or power to grant the relief prayed for.

We submit that the respondents' motions to affirm should be denied.

Respectfully submitted,

Am. O. Locke.....

James C. Jones, Jr......
Counsel for Petitioners.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

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| HARTFORD LIFE INSURANCE COMPANY, | } No. 271. | |
| vs. | | |
| ROBERT H. LANGDALE, | | |
| | Petitioner, | |
| | Respondent. | |

On Writ of Certiorari to the Supreme Court of Ohio.

BRIEF FOR PETITIONER.

This case is similar to that of Hartford Life Insurance Company v. Frank F. Douds et al., No. 265, of the October Term, 1922. Both cases having been docketed for hearing in this court at the same time, and the parties having filed a stipulation for the consolidation of the cases, we will confine ourselves here merely to a statement of the case, and refer the Court to the brief filed by petitioner in the companion case for a discussion and consideration of the questions and issues here involved.

STATEMENT OF CASE.

Petitioner is a corporation, organized under the laws of the State of Connecticut, having its home office in the City of Hartford of that state, where, in its Safety Fund Department it is now, and has for many years past, been operating a life insurance business on the assessment or mutual plan.

On November 13, 1916, Robert H. Langdale, a citizen and resident of Ohio, and the holder of a certificate of membership for \$3,000 issued in 1882, in the Safety Fund Department of your petitioner, filed suit against your petitioner in the Court of Common Pleas, Franklin County, State of Ohio (Rec., p. 5), in which it was averred that petitioner had levied assessments against him under his certificate which were excessive in amount and in excess of the rate of assessment specified in the table of rates incorporated in his certificate; that the amount of the excess of such assessments was to him unknown, but that the same amounted to about the sum of \$850. Upon these averments Langdale prayed for the following relief: (1) An accounting to determine the amount of the excess of the assessments paid; (2) A money judgment for the amount of the excess of such assessments with interest, found to have been paid by him upon such accounting, and (3) An injunction to re-

strain petitioner from thereafter levying assessments against him under such certificates in excess of what the Ohio Court found to be the lawful and proper rate of assessment.

Petitioner, appearing specially and for that purpose only, demurred to this petition, averring that the Ohio Court had no jurisdiction of the subject matter of the suit. This demurrer was overruled and petitioner, being ordered so to do (Rec., p. 3), filed its answer, in which it reasserted that the courts of Ohio had no jurisdiction of the subject matter of this suit or power to grant the relief prayed for, and further averred that if the courts of Ohio undertook to exercise jurisdiction of this suit and to grant the relief therein prayed your petitioner would be deprived of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Constitution of the United States (Rec., p. 18).

The trial court, upon the filing of this answer, referred the cause to a referee to take an accounting and make a report to the trial court (Rec., p. 3).

Thereafter, the Referee filed a report in which he found that the assessments levied by petitioner against Langdale under said certificate were excessive; determined what the proper or lawful rate of assessment should have been thereunder; found that the excess of the assessments so paid by Langdale under said certificate amounted to the sum of \$849.77,

and recommended the granting of the relief prayed for in the petition (Rec., p. 25).

Judgment was thereafter entered by the trial court in favor of the respondent and against your petitioner for the sum of \$849.77 as the amount of the excess, with interest, of the assessments found by the Referee to have been paid under said certificate. The trial court did not decree the injunctive relief prayed for in the petition (Rec., p. 4).

From this judgment your petitioner appealed to the Court of Appeals for Franklin County, Ohio. The judgment of the trial court was affirmed by that court (Rec. p. 51), whereupon and on motion of petitioner, the record and appeal in the cause was certified to the Supreme Court of the State of Ohio by the order of that court. On the 15th day of November, 1921, the Supreme Court of Ohio affirmed the judgment of the Court of Appeals of Franklin County, Ohio, upon the authority of *Hartford Life Insurance Company v. Alonzo J. Douds* in which an opinion was rendered by the Supreme Court of Ohio on the same day. In due course, and within the time required by law, petitioner applied to this Court for a writ of certiorari to review the judgment of the Supreme Court of Ohio in this cause, which was allowed.

SPECIFICATION OF ERRORS.

Petitioner relies upon the following errors in support of its prayer for the reversal of the judgment of the Supreme Court of Ohio herein:

1. The claim of Robert H. Langdale, as a member of the Safety Fund Department of petitioner, that the assessments previously levied against him under his certificate were illegal and excessive, and his bill herein for an accounting to determine the amount of the excess of these alleged excessive assessments and for a money judgment for the excess of the assessments found to have been paid by him upon such accounting had to do with the *internal affairs* and *management* of petitioner, a Connecticut corporation, over which the courts of Ohio had no jurisdiction, and the exercise of such jurisdiction and the rendition of the judgment complained of herein by the Ohio court deprives petitioner of its property without due process of law, contrary to and in violation of the the Fourteenth Amendment to the Federal Constitution.

2. The Ohio Supreme Court erred in holding that the exercise of jurisdiction in this cause and the rendition of the judgment herein by the Ohio court did not deprive petitioner of its property without due process of law in contravention of the Fourteenth

Amendment to the Constitution of the United States.

3. The subject matter of this suit likewise involved the validity of acts performed by petitioner *as trustee* in the management and operation of its Safety Fund Department in the State of Connecticut, over which the courts of Connecticut had sole and exclusive jurisdiction, and the exercise of jurisdiction and the rendition of the judgment complained of herein by the Ohio court deprived petitioner of its property without due process of law, contrary to and in violation of the Fourteenth Amendment to the Federal Constitution; and the Ohio Supreme Court erred in holding that the exercise of jurisdiction by the courts of that state and the rendition of the judgment complained of herein did not deprive petitioner of its property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

Harry B. Arnold

James C. Jones

Frank H. Sullivan

James C. Jones Jr.

Counsels for Petitioner.

HARTFORD LIFE INSURANCE COMPANY v.
DOUDS ET AL., EXECUTORS OF DOUDS.

HARTFORD LIFE INSURANCE COMPANY v.
LANGDALE.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

Nos. 265 and 271. Argued March 7, 1923.—Decided April 9, 1923.

1. The lack of power in a state court to interfere in the management of an insurance company of another State or to control the discretion of its officers, does not deprive it of jurisdiction to render a pecuniary judgment, in an action by an insured to recover amounts collected through assessments exceeding the *maxima* specified in the contract of insurance. P. 478.

So *held* where the company appeared and contested the jurisdiction, upon the ground that the proceedings involved its internal affairs and the validity of its action relative to its Safety Fund Department, over which matters the courts of its domicile had exclusive jurisdiction, and that the enforcement of the judgment would deprive it of property without due process of law. *Hartford Life Ins. Co. v. Ibs*, 237 U. S. 662, distinguished.

103 Ohio St. 398, 433, affirmed.

CERTIORARI to judgments of the Supreme Court of Ohio affirming judgments against the Insurance Company in actions by the respondents to recover money paid under excessive assessments.

Mr. Harry B. Arnold, Mr. James C. Jones, Mr. Frank H. Sullivan and Mr. James C. Jones, Jr., for petitioner, submitted.

Mr. Smith W. Bennett, with whom Mr. Hugh M. Bennett was on the brief, for respondents.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

These are separate causes, but the facts are similar and both present the same essential question. A statement based upon record No. 271 will suffice.

Petitioner is a Connecticut corporation with home office at Hartford. For many years it has carried on the business of insurance upon the assessment or mutual plan within the State of Ohio. May 4, 1882, it issued to respondent Langdale, aged forty, a certificate of membership, Safety Fund Department, for three thousand dollars. This recites that in consideration of representations, etc., and "the further payment, in accordance with the conditions hereof, of all mortuary assessments," the Company agrees (among other things) to assess holders of certificates "according to the table of graduated assessment rates given hereon, as determined by their respective ages and the number of such certificates in force," and pay the amount so collected to the assured's legal representatives.

The "Table of graduated assessment rates for death losses for every \$1,000 of a total indemnity of \$1,000,000" is printed upon the certificate and shows increasing rates for ages from fifteen to sixty. The highest specified rate

is at sixty—\$2.68. Immediately after the table this statement appears: "These rates decrease in proportion as the total indemnity in force increases above one million dollars in amount, and are calculated so as to cover the usual expense for collecting."

During the years 1903 to 1914 the Company made and the insured paid assessments on account of death losses at rates varying from \$2.86 to \$4.00 per thousand. To recover all above \$2.68 per thousand so paid, with interest, respondent brought suit in the Common Pleas Court, Franklin County, Ohio. The Company appeared, demurred and later answered, saving at all times the question of jurisdiction. A judgment against it was affirmed by the Supreme Court. 103 Ohio St. 398, 433.

Petitioner now insists that the trial court lacked jurisdiction of the subject-matter; that the suit involved the management of its internal affairs and the validity of action relative to the Safety Fund Department; that the courts of Connecticut have exclusive jurisdiction over such matters; and that enforcement of the Ohio judgment will deprive it of property without due process of law.

The court below confined its ruling concerning jurisdiction to the trial court's power to render the above mentioned money judgment. And it held that to determine the issue did not require exercise of visitatorial power over the foreign corporation; that the judgment did not interfere with the discretion of petitioner's officers or the management of its internal affairs. This conclusion, we think, is plainly right.

By a written contract petitioner had agreed that no mortuary assessment should exceed \$2.68 per thousand. It demanded and received more, and respondent sued to recover the excess. All parties came before the court; the necessary facts were established; and he obtained judgment for a definite sum of money. This cannot interfere with the management of the Company's internal affairs.

In the recent cause of *Frick v. Hartford Life Insurance Co.*, 119 Atl. 229, instituted to enforce an Iowa judgment (179 Iowa, 149) against petitioner based upon facts essentially like those here disclosed, the Supreme Court of Connecticut considered the precise point now urged upon us. In harmony with *Dresser v. Hartford Life Insurance Co.*, 80 Conn. 681, 709, it held that the membership certificate constituted a contract not to demand of the assured more than \$2.68 per thousand for any mortuary assessment; and also that the jurisdiction of the Iowa court to render judgment for excess payments was clear.

Hartford Life Insurance Co. v. Ibs, 237 U. S. 662, is not in point. That controversy related to the effect of the decree in *Dresser v. Hartford Life Insurance Co.*, *supra*, a class suit instituted to determine the status and proper use of the mortuary fund. The causes now under consideration present no such problem.

The judgments below are

Affirmed.